

DEPARTMENT OF THE NAVY BOARD FOR CORRECTION OF NAVAL RECORDS 701 S. COURTHOUSE ROAD, SUITE 1001 ARLINGTON, VA 22204-2490

> Docket No. 5387-23 Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although you did not file your application in a timely manner, the statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 26 January 204. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, to include the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo) The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Navy and commenced active duty, on 12 September 1997, after disclosing pre-service marijuana use.

On 24 June 1998, you were found guilty at Summary Court Martial (SCM) for wrongful possession of drug paraphernalia and wrongful use of marijuana. On 4 July 1998, you

commenced a period of unauthorized absence that ended in your surrender on 6 July 1998. You subsequently received non-judicial punishment (NJP) for that period of UA.

On 27 July 1998, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to drug abuse and commission of a serious offense. You waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board (ADB). On 12 August 1998, you received a separation physical where you denied any mental health symptoms. The Separation Authority directed your discharge with an OTH characterization of service and you were so discharged on 31 August 1998.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to change your discharge characterization of service and your contentions that you experienced a traumatic event while enlisted that resulted in PTSD, used drugs and alcohol to deal with the resulting symptoms, were not offered assistance or treatment from the Navy, have been sober for 19 years, earned your Associate's degree, have a wife and son, and have not had any issues since you got sober. For purposes of clemency and equity consideration, the Board considered your statement, the advocacy letters, resume, and college transcript you provided.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 13 December 2023. The AO stated in pertinent part:

Petitioner claimed he incurred PTSD during military service, and that he used alcohol and marijuana to alleviate his symptoms. He submitted an April 2018 PTSD evaluation from a civilian mental health clinician that listed his precipitant trauma as "discharge court martial from the Navy." He provided a statement of support from his spouse and evidence of character and post-service accomplishment.

There is no evidence that he was diagnosed with a mental health condition in military service. He has submitted evidence, temporally remote to his military service, of a diagnosis of PTSD attributed to military service. It is not clear how his precipitant event rises to the criteria of trauma. Additionally, available records are not sufficiently detailed to provide a nexus with his misconduct, particularly given his pre-service marijuana use that appears to have continued in service, and his statements during his PTSD evaluation that his traumatic precipitant was the court martial consequence of his in-service use. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. The Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Further, the Board noted you served less than one year on active duty, during which you were court-martialed and received NJP, after reporting to your first command.

Additionally, the Board concurred with the AO determined that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service and insufficient evidence to attribute your misconduct to PTSD or another mental health condition. The Board discussed your contention that you experienced a "traumatic event" that resulted in PTSD and that led to your drug use. The Board further noted that, as mentioned in the AO, you indicated the traumatic event was your SCM, which was, in fact, a consequence of your drug use. Therefore, the Board was not persuaded by your claim that your drug use was a result of the trauma of receiving a SCM.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation and commends you for you your post-discharge accomplishments, even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.



Sincerely,