



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

■
Docket No. 5504-23
Ref: Signature Date

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Dear ■

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 10 January 2024. 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, 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 and your response to the AO.

You enlisted in the Marine Corps and began a period of active duty on 11 September 2000. On 11 May 2001, you received non-judicial punishment (NJP) for stealing a carton of cigarettes, the property of the Marine Corps Exchange. Additionally, you were issued an administrative remarks (Page 11) formally counseling you concerning deficiencies in your conduct.

You participated in Operation Enduring/Iraqi Freedom and ■ from 18 February 2003 to 20 June 2003.

On 11 September 2003, you received a second NJP for failure to obey a lawful order issued by the Battalion Commander. On 12 September 2003, you were issued a Page 11 formally counseling you concerning your Violation of the Uniform Code of Military Justice, Article 92, failure to obey order or regulation. On 10 December 2003, you were convicted by a summary court-martial (SCM). The charges and specifications are not available in the record. On 12 January 2004, you were issued a Page 11 formally counseling you concerning deficiencies in your conduct. Specifically, failure to follow orders and regulations, and dereliction of duty, to wit: drinking and driving, drinking while on restriction, violation of the barracks visitor's policy, and dereliction of duty while "ADNCO" by taking a shower while on duty. On 1 October 2004, you received a third NJP for wrongful use of cocaine. On 4 October 2004, at the completion of your required active service, you were discharged from active duty, you were issued a Certificate of Release or Discharge from Active Duty (DD Form 214) that annotated your characterization of service as General (Under Honorable Conditions). Your final conduct average was 3.8.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 20 May 2015, based on their determination that your discharge was proper as issued.

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 character of service to Honorable and contentions that: (1) upon your return to the United States from your deployment your level of functioning began to deteriorate leading to your subsequent remaining misconduct indicated in your record, (2) post-combat your thoughts and behavior shifted from your normal behavioral pattern to interfering in and affecting all aspects of your service and life, (3) your unusual and wrongful behavior substantiates the existence of your PTSD at that time and your post-combat misconduct demonstrates a serious deviation from your normal behavior, (4) your conduct was consistent with the symptomology of PTSD, (5) to try and cope with your circumstances you entered into a severe substance abuse disorder; this was secondary to or caused by your primary psychological disturbance, (6) your worsening condition carried over and affected your functioning as a civilian after your active-duty service, (7) your condition interfered with your ability to maintain employment as a volunteer firefighter, and your ability to maintain any kind of meaningful relationship with others, and (8) you received your less-than-honorable discharge based on conduct attributable to an undiagnosed service-connected PTSD condition. For purposes of clemency and equity consideration, the Board noted you provided a statement on your behalf, a PTSD disability benefits questionnaire, and documentation describing post service accomplishments but no advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 29 November 2023. The AO noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, although there is behavioral evidence of a possible alcohol use disorder. Post-service, the VA has granted service connection for PTSD symptoms attributed to combat exposure. His initial NJP occurred prior to his deployment and is behavior not consistent with PTSD symptoms. There is insufficient information

to attribute his disobedience to PTSD symptoms. It is possible that his problematic alcohol use and subsequent misconduct could be attributed to attempts to self-medicate unrecognized symptoms of PTSD. 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 post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute all of his misconduct to PTSD."

In response to the AO, you provided a personal statement that supplied additional clarification of the circumstances of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

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 NJPs and multiple administrative counselings, 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 considered the likely negative effect your misconduct had on the good order and discipline of your unit. Further, the Board noted that your conduct scores were insufficient to qualify for a fully Honorable characterization of service. At the time of service, a conduct mark average of 4.0 was required to be considered for a fully Honorable characterization of service; a minimum mark you failed to achieve due to your extensive record of misconduct. Additionally, the Board concurred with the AO that while there is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service, there is insufficient evidence to attribute all of your misconduct to PTSD. As the AO explained, there is no evidence that you were diagnosed with a mental health condition in military service, although there is behavioral evidence of a possible alcohol use disorder. The Board concluded you were responsible for your misconduct that formed the basis for your General (Under Honorable Conditions) (GEN) characterization of service. The Board also noted, despite your record of misconduct, you were given multiple opportunities to correct your behavior and fortunate to have committed your drug offense at the end of your obligated service. This allowed to continue to the end of your obligated service rather than face administrative separation with the potential for an Other Than Honorable discharge. As a result, the Board determined significant negative aspects of your active-duty service outweighed the positive aspects and continues to warrant a GEN characterization of service. While the Board carefully considered the evidence you submitted in mitigation and commends you for 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, _____

1/23/2024

