



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

█
Docket No. 6546-23

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 16 February 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, 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider. Although you were afforded an opportunity to submit an AO rebuttal for consideration, you chose not to do so.

Upon your inter-service transfer from the U.S. Marine Corps, you enlisted in the U.S. Navy and began a period of active duty service on 17 February 1984. Your pre-enlistment physical examination, on 17 February 1984, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. You were authorized to transfer to the Navy as a Religious Programming Specialist (RP) at the rank/grade of Seaman (E-3). On 20 March 1984, you reported for duty with █ in █.

On 11 May 1984, you commenced a period of unauthorized absence (UA) that terminated on

15 May 1984. On 24 May 1984, you received non-judicial punishment (NJP) for your UA and for failing to obey a lawful order. You did not appeal your NJP. On 4 June 1984, your command issued you a "Page 13" retention warning (Page 13) documenting your NJP. The Page 13 expressly warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation. However, on 17 October 1984, you received NJP for failing to obey a lawful order or regulation. You did not appeal your NJP.

On 27 August 1985, you underwent a drug dependency screening. During your screening you admitted that you decided to use cocaine and ate brownies with phencyclidine (aka PCP or "Angel Dust") to celebrate a friend's birthday, and also because you felt it would lead to an administrative discharge. You were not diagnosed to be drug dependent, and the clinician recommended that you be separated from the Navy.

On 11 September 1985, you received NJP for the wrongful use of both cocaine and PCP. You did not appeal your NJP. On 20 September 1985, you commenced a period of UA that terminated on 21 October 1985. During your UA, your command removed your RP designator on 24 September 1985. On 31 January 1986, you commenced another UA that terminated on 3 February 1986

On 6 February 1986, you were convicted at a Summary Court-Martial (SCM) for your 31-day UA, breaking restriction, and for the wrongful use of cocaine. You were sentenced to confinement, a reduction in rank to the lowest enlisted paygrade (E-1), and forfeitures of pay. The Convening Authority approve the SCM findings and sentence as adjudged.

On 11 February 1986, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to drug abuse, pattern of misconduct, and commission of a serious offense. You consulted with counsel and, on 5 March 1986, waived your right to request an administrative separation board. In the interim, you commenced another UA that terminated after one (1) day on 17 March 1986. Ultimately, on 27 March 1986, you were discharged from the Navy for misconduct with an under Other Than Honorable conditions (OTH) characterization of service and assigned an RE-4 reentry code.

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 for a discharge upgrade and contentions that: (a) you self-medicated after a close family member passed away and were not given the opportunity to attend the funeral, and also after dealing with being discriminated against for having a Muslim name and observing the religion of Islam, (b) you were also discriminated against for being a former Marine, and (c) since you have been out of the service you have never been in trouble with the law and have always been gainfully employed. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 4 January 2024. The Ph.D. stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. The absence of formal mental health or substance use disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. Unfortunately, he has provided no medical evidence to support his claims of PTSD and other mental health concerns. There is insufficient evidence of clinical symptoms of a mental health condition in service or to provide a nexus with his misconduct. 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 Ph.D. concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition 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 these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to any mental health-related conditions or symptoms. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your cumulative misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 1.733 in conduct. Navy regulations in place at the time of your discharge recommended a minimum trait average of 3.0 in conduct (proper military behavior), for a fully Honorable characterization of service. The Board concluded that your misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your cumulative drug-related misconduct.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. Additionally, the Board determined that illegal drug use is contrary to Navy core values and

policy, renders such service members unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation, 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,

2/29/2024

[REDACTED]

Executive Director

Signed by: [REDACTED]