



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

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Docket No. 7443-23
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 15 March 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 and your AO rebuttal.

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 U.S. Navy and began a period of active duty service on 15 October 1980.

Your pre-enlistment physical examination, on 30 September 1980, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 12 May 1981, you received non-judicial punishment (NJP) for the forgery of a “sick in quarters” (SIQ) chit to provide you with additional time off. You did not appeal your NJP. On 26 August 1982, you received NJP for violating a lawful general regulation when you possessed a controlled substance (marijuana), and for violating a lawful written order. You did not appeal your NJP.

On 23 March 1984, you received NJP for: (a) attempting to submit a false urine sample during a urinalysis test, (b) wrongful possession of a controlled substance (marijuana), and (c) for failing to obey a lawful order to submit to a probable cause urinalysis. You did not appeal your NJP.

On 26 March 1984, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. You consulted with counsel and elected your right to present your case to an administrative separation board (Adsep Board). However, prior to the Adsep Board, on 6 April 1984, you received NJP for the wrongful use of a controlled substance (marijuana) between 12 February and 12 March 1984. You did not appeal your NJP.

On 19 April 1984, an Adsep Board convened to hear your case. At the Adsep Board, you were represented by a Navy Judge Advocate. Following the presentation of evidence and any witness testimony, the Adsep Board members unanimously voted and determined that you committed the misconduct as charged, and voted 3-0 that you should be discharged with an under Other Than Honorable conditions (OTH) characterization of service.

In the interim, on 18 May 1984, you received NJP for the wrongful use of a controlled substance (marijuana), the wrongful introduction of marijuana onto a naval vessel, the wrongful introduction of drug paraphernalia onto a naval vessel, and for the violation of a lawful order when you missed restricted men’s musters. You did not appeal your NJP.

On 22 June 1984, you received NJP for the violation of a lawful order when you again missed a restricted men’s muster. You did not appeal your NJP. Ultimately, on 27 July 1984, you were discharged from the Navy with an OTH characterization of service for misconduct due to drug abuse 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 Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and changes to your reason for separation and reentry code. You contend that: (a) you suffered an injustice by being discharged for simple possession of marijuana, a substance that today is legal both medically and recreationally in many states, (b) States have legalized marijuana and President Biden pardoned “all prior Federal offenses of simple possession of marijuana,” (c) clearly, marijuana is viewed in a much more lenient light than it was in 1984, (d) before your discharge you deployed with your unit and earned multiple awards, and your three-year service

in the Navy should be considered along with your exemplary post service conduct, (e) post-service you suffered from a substance use disorder and homelessness, (f) you have since entered treatment and lived an exemplary life, (g) you do not attribute your conduct to a mental health condition, but instead attribute your misconduct to your youth and a possible substance abuse problem, and (h) your post-military service warrants relief in accordance with the Wilkie Memo because your post-discharge service outweighs the misconduct resulting in your discharge. For purposes of clemency and equity consideration, the Board considered the entirety of 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 20 February 2024. The Ph.D. stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or 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."

Following a review of your AO rebuttal where you requested the Board to disregard the AO because you no longer attribute your misconduct to a mental health condition, the Ph.D. did not change or otherwise modify their AO.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. 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. The Board determined the record reflected that your pattern of 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.

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 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 misconduct far outweighed any and all mitigation offered by such mental health conditions.

The Board determined that your contention of a blanket presidential pardon for federal marijuana possession convictions was without merit. The Board noted that on October 6, 2022, President Biden issued a presidential proclamation pardoning federal convictions for simple marijuana possession offenses in violation of the Controlled Substances Act, or in violation of D.C. Code 48-904.01(d)(1). The Board noted neither code provision applied to your case as your drug-related offenses were charged as violations of the Uniform Code of Military Justice, and that your cumulative drug offenses also included, *inter alia*, wrongful marijuana use (twice), and introduction-related charges (twice), in addition to simple drug possession.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board 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,

3/20/2024

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