



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. 7823-23
Ref: Signature Date

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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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 18 October 2023. 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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.

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 previously applied to this Board for an upgrade to your characterization of service, restoration of your rank to the paygrade of E-5, change your narrative reason for separation, separation code, reenlistment code, and add missing awards. You were granted partial relief on

9 August 2023, in the form of the issuance of a DD Form 215 with correction to the Remarks Section, Block 18, of your DD Form 214 by annotating the remarks “Continuous Honorable Active Service: “4 December 1996 to 7 March 2000” and a record review of your official military personnel file to grant you all eligible medals and awards, as appropriate, based on your period of service from 4 December 1996 to 30 July 2004. Before this review, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 16 December 2005, 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, restoration to the rank of E-5, removal of negative references to your separation, and issue a new DD Form 214 with corrections to include missing service awards, and unit awards. The Board considered your contentions that: (1) any evidence that may have corroborated an in-service diagnosis of dissociative identity disorder was destroyed when your service medical record was “lost” after your arrest, (2) prior to your arrest, you had no interaction or relationship with drugs or alcohol, (3) you were convicted of a crime that you have no memory of committing, (4) you have a severe mental health condition that forces you to do things you otherwise would not have done, and leaves you with no memory of the event, (5) the mental health condition existed at the time of your arrest, as demonstrated by identical symptomology between then and now, (6) you did not have an exit physical exam, no medical questionnaire, and no screening for mental health disorders at the time of your separation due to your incarceration, (7) after your arrest, covering more than 20 years of life, you have had no interaction or relationship with drugs or alcohol, and (8) while you were incarcerated you passed a polygraph stating that you knew nothing of the drug conspiracy. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

As part of the Board’s review, a qualified mental health professional reviewed your request and provided the Board with an AO on 14 June 2023. The AO noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. Post-service, the Department of Veterans Affairs (VA) has granted service connection for PTSD and a civilian provider has diagnosed Dissociative Identity Disorder, which are both temporally remote to his military service. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. The Petitioner’s current statements are not consistent with his statements in his service record. Additionally, his detailed description of relationships and transportation plans in service are not consistent with a dissociative state. Additional records (e.g., in-service or 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 post service evidence from a civilian provider of another mental health condition. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition.”

In response to the AO, you provided a personal statement on your behalf and supporting documentation 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 civilian arrest and conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a serious 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. Additionally, the Board considered the likely negative effect your misconduct had on the good order and discipline of your unit, and the discrediting nature your arrest and conviction had on the Marine Corps. Further, 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 your misconduct to PTSD or another mental health condition. As the AO explained, the available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct. Additionally, your detailed description of relationships and transportation plans in service are not consistent with a dissociative state. Finally, be advised decisions reached by the VA to determine if former service members rate certain VA benefits do not affect previous discharge decisions made by the Marine Corps. The criteria used by the VA in determining whether a former service member is eligible for benefits are different than that used by the Marine Corps when determining a member’s discharge characterization of service. 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, 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,

11/2/2023

