



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. 1125-23
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 14 July 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 the 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 to 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) of a qualified mental health provider. Although you were afforded an opportunity to submit a rebuttal to the AO, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 1 April 1987. On 31 August 1987, you were administratively counseled that you were disqualified from submarine duty by reason of academic failure. On 30 August 1988, you were subject to nonjudicial punishment (NJP) for unauthorized entry into a restricted area, use of provoking words toward another service member, and assault. Just over a week later, you were again subject to NJP for disrespectful language toward a petty officer and for two specifications of disobeying a lawful order. Subsequently, you were administratively counseled for failure to be at your appointed place of duty, which was in addition to your previous NJP offenses. At that time, you were

warned that continued conduct offenses could result in administrative separation with an adverse characterization of service.

On 20 December 1988, you were subject to a third NJP for wrongful use of the controlled substance (cocaine), which resulted in your processing for administrative separation for misconduct due to drug abuse and a pattern of misconduct. After consulting with legal counsel, you elected to waive your right to a hearing before an administrative separation board. While pending further processing action, you elected to absent yourself without authority from 27 February through 13 March 1989. You voluntarily returned to military control, after which the recommendation for your discharge under Other Than Honorable (OTH) conditions was forwarded for final action. In his recommendation, your commanding officer stated that, in your short time in the Navy, you had “already established the fact that [you were] unfit to be a productive member” and that your performance had been unsatisfactory and unproductive. Commander, Naval Personnel Command, approved your separation for misconduct due to pattern of misconduct and you were discharged, on 19 April 1989.

In a previous application to the Naval Discharge Review Board (NDRB), considered on 14 May 1991, you contended that your discharge was too harsh in light of your overall record of service and that your discharge was inequitable because your medical problem (your skin/foot rash) caused you problems aboard your ship. The NDRB denied your request after determining 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 upgrade your discharge to “Honorable” and change your narrative reason for separation and separation code to reflect “Secretarial Authority” along with a “corresponding” change to reenlistment code. You contend that you are “entitled to an upgrade to Honorable based on criteria established by Federal law, the Hagel Memo and the Kurta memo,” you were falsely arrested by civilian law enforcement, due to an identity error, and jailed for 2 weeks during your initial “A” school training, “until they realized they had the wrong person,” your missed training resulted in failing tests which forced you out of training in that occupational field, you reclassified as a ship mechanic, and your peers aboard ship would refer to you by offensive racial epithets and make comments such as “go home monkey.” You blame your first assault charge on an altercation which began with a white sailor whom you assert called you the “N” word to your face and stepped on your foot, which was covered only with a sandal due to your medical chit. As a result, you describe that a chaotic fight caused you to accidentally enter an unauthorized space. You also claim that you never knowingly used cocaine during your military serviced; rather, you believe that someone put cocaine into one of your drinks one night when you went out drinking with other sailors. You also contend that you turned over a video of a “secret” meeting aboard the ship conducted by a racist organization, but that you were discharged before learning the outcome of the investigation which you were assured would occur. Finally, you state that you were supposed to be medically discharged due to your skin condition but were instead betrayed and kicked out, which has left you feeling bitter and scarred. You believe that, if current policies and procedures regarding racism and harassment had been in place at the time of your service, you would have experienced a less prejudicial outcome. For purposes of clemency and equity consideration, the Board noted you submitted: a personal statement; your service health records; civilian mental health progress notes from 2019; a medical letter and records regarding your skin condition,

submitted to the Department of Veterans Affairs (VA) in 1997; VA medical records from 2008; a VA publication regarding post-traumatic stress disorder (PTSD) due to racial trauma, published in 2023; Government Accountability Office Equal Opportunity Studies on Discrimination in the Military, published in 1995; a Department of Defense Office of People Analytics Workplace and Equal Opportunity Survey from 2017; an American Psychological Association article on racial trauma from 2021; a Journal of Investigative Dermatology article on the Psychological Burden of Skin Diseases, published in 2015; and, several New York Times articles titled *Wide Bias Against Minorities Found in Navy* (1988), *Klan Faction's 'Recruiting' Efforts Pose a Policy Problem for the Navy* (1979), and *4 Sailors Guilty Over Klan Rally* (1979).

Because you contend, in part, that PTSD or another mental health condition affected your discharge, the Board also considered the AO. The AO 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. Post-service, he has received a diagnosis of PTSD that is temporally remote to his military service and reported to have onset “after war,” which is not consistent with his service record. Although he has provided evidence of treatment for mental health concerns, this treatment is temporally remote to his military service and appears unrelated. Unfortunately, his personal statement is not sufficiently detailed to provide a nexus with his misconduct, particularly given pre-service behavior that appears to have continued in service and his denial of symptoms upon separation. 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 a civilian provider of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to PTSD or another mental health condition.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included 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. With respect to your contention that you did not knowingly commit the offense of wrongful use of cocaine but were, instead, drugged by another person, the Board found this contention without merit. The Board noted that you elected to consult with defense legal counsel, after which you chose to waive your right to a hearing before which you could have contested the wrongfulness of your positive urinalysis. The Board concluded that this voluntary decision on your part weighed too heavily against your interest to give credence to this contention. Further, the Board concurred with the AO that insufficient evidence that your misconduct may be attributed to PTSD or another mental health condition. The Board considered that the deployment cycle for the █, upon which you were stationed during your service, did not participate in a combat deployment which might have exposed you to “war” circumstances. Further, the Board determined that the evidence within the

medical records, which you submitted in support of your contention of PTSD, reflects a lack of candor. Therefore, in the absence of any direct evidentiary support apart from your own statement, the Board was not persuaded by your personal contentions regarding your experiences during your military service. The Board also considered the general evidence of racial bias, which you submitted for consideration, but also found it unpersuasive with respect to your significant offense of drug abuse. 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 the 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 is attached 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,

8/1/2023

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