



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

██████████
Docket No. 6778-23

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 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 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, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Navy, having denied pre-service history of drug use, and began a period of active duty on 12 September 1996. On 13 February 1997, you were subject to a random urinalysis, the results of which were ultimately positive for marijuana use. You then absented yourself without authority on 11 March 1997 but surrendered to military authority the following day. In your substance abuse screening, on 14 March 1997, you admitted that you had first used cannabis beginning at age 17, prior to your military service. Consequently, you were notified of

processing for administrative separation for misconduct due to drug abuse and, after consulting counsel, requested a hearing before an administrative board. You were also subject to nonjudicial punishment (NJP), on 26 March 1997, for a violation of Article 112a of the Uniform Code of Military Justice (UCMJ) due to your wrongful use of a controlled substance. While awaiting your administrative board hearing, you absented yourself without authority for two additional periods in May and June 1997, and were subsequently subject to a second NJP for three specifications of violation of Article 86 of the UCMJ for unauthorized absence (UA).

Your administrative separation board hearing proceeded on 14 July 1997, where you elected to make a statement that your friend / roommate had attempted to commit suicide in front of you by overdosing on your prescription medication. You stated that you had never experienced the sort of trauma you did at that time and, when offered marijuana by a friend who told you it would help, chose to take it in hopes that it would ease your stress and emotional pain. You also acknowledged the wrongfulness of your conduct. The members substantiated the basis for separation, recommending your discharge under Other Than Honorable (OTH) conditions. A concurring recommendation forwarded by your chain of command noted the additional aggravating factor of your continued misconduct since the time of your initial drug abuse offense. Your separation was approved, and you were discharged, on 19 September 1997, with an OTH.

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 and your contentions that your misconduct was mitigated by early symptoms of paranoid schizophrenia, which you claim began during your time in the Navy. For purposes of clemency and equity consideration, the Board noted you submitted a letter from a licensed clinical social worker documenting your receipt of mental health services for symptoms of schizophrenia as of August 2023.

Because you contend that a serious mental health (MH) condition affected the circumstances of 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 a serious mental health condition that is temporally remote to his military service and appears unrelated. Unfortunately, available records are 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 AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a 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. Further, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, your post-service diagnosis of a serious mental health condition is temporally remote to your military service and appears unrelated. Further, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct. Therefore, the Board found insufficient evidence that your contended schizophrenia symptoms contributed to your drug abuse or UA offenses.

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,

4/1/2024

