



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. 7035-23

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.

Although you did not file your application in a timely manner, the statute of limitations 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 18 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 service 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)/mental health condition (MHC) (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 an advisory opinion (AO) from a qualified mental health professional. Although you were offered the opportunity to reply to the AO, you chose not to do so.

You enlisted in the United States Marine Corps and commenced a period of service on 10 March 1981. On your enlistment application, you acknowledged pre-service “experimental” marijuana use. You stated, “I have experimented with marijuana in 1978 and didn’t enjoy the experience.” You acknowledged the Marine Corps’ zero tolerance drug policy and signed an administrative counseling to that effect.

On 17 November 1981, you were formally counseled after testing positive for marijuana. You were retained in the service after being put on notice that continued misconduct could result in

judicial or administrative processing. On 23 May 1983, you were found guilty at non-judicial punishment (NJP) of violating Uniform Code of Military Justice (UCMJ) Article 134, for the wrongful use of marijuana. You did not appeal this NJP and were again retained in the service despite your violation of Marine Corps policy. From 29 May 1983 to 19 November 1983, you were deployed as part of the █ █

A year later, on 2 November 1984, you were evaluated for a substance use disorder. During this screening, you reported that your first use of marijuana was at age 14, with daily use beginning at age 15. This information was inconsistent with what you disclosed at the time of your enlistment. You endorsed use of marijuana and cocaine in service and were diagnosed as drug dependent. You reported that your tolerance at the time of screening was 24-30 joints and you admitted to consistent drug use throughout your time in service. On 6 November 1984, you received your second NJP for violation of UCMJ Article 112(a), for the wrongful use of cocaine. You did not appeal this NJP.

On 4 December 1984, you were notified that you were being processed for administrative discharge with an Other than Honorable (OTH) characterization of service due to your drug abuse. You elected your right to consult with qualified counsel and submitted a statement in your defense, arguing that if the military had provided you with treatment after your first NJP, it would have helped alleviate your drug use. Prior to your discharge, you were given a separation physical, wherein you report to be “in good health” and fail to disclose any mental health issues or concerns that would have triggered referral for treatment. On 15 February 1985, you were separated based on drug abuse with an OTH and an RE-3B reentry code.

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire to upgrade your characterization of service, (b) your assertion that you were struggling with undiagnosed mental health conditions during your service, and (c) the impact that your mental health had on your conduct. For purposes of clemency and equity consideration, the Board noted you did not provide documentation related to your post-service accomplishments or character letters.

In your request for relief, you contend that you incurred Post Traumatic Stress Disorder (PTSD) from the stress of deployment to Beirut and the October 1983 bombing of the Marine barracks. You explain that you did not know at the time how much your service in Beirut was affecting you. In support of your request, you provided a Department of Veterans Affairs (VA) service connection for treatment purposes only for “Adjustment Disorder with Depressed Mood (claimed as psychiatric disorder to include PTSD, Depression, Anxiety Disorder).” You also provided articles about the circumstances occurring in Beirut. 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 31 January 2024. The Ph.D. noted in pertinent part:

During military service, Petitioner was evaluated and diagnosed with a substance use disorder that was pre-existing to his service. There is no evidence of a diagnosis of PTSD. Post-service, the VA has granted service connection for a

mental health condition. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, given his pre-service behavior that continued in service. 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 post-service evidence from the VA of a mental health condition that may be attributed to military service (adjustment disorder). There is insufficient evidence of a diagnosis of PTSD. There is insufficient evidence to attribute his misconduct to a mental health condition other than substance use disorder."

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about undiagnosed mental health issues and the possible adverse impact on your service. Specifically, the Board felt that your misconduct, as evidenced by your NJPs and history of drug abuse while on active duty, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the likely negative impact that your conduct had on the good order and discipline of your command. The Board determined that drug abuse is contrary to Marine Corps values and policy, renders such Marine unfit for duty, and places an unnecessary burden on fellow shipmates.

In making this determination, the Board concurred with the AO that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. Your in-service misconduct appears to be consistent with your substance use disorder, rather than evidence of another mental health condition incurred in or exacerbated by military service. Your substance abuse began well before your service, which you failed to disclose on your enlistment screening, and continued throughout your service.

The Board highlighted that two drug related incidents occurred before your deployment to Beirut. The Board noted that you did not report that you were suffering from any mental or physical conditions that would have triggered referral for treatment. The Board also highlighted that you failed to mention any such concerns during your separation physical on 5 December 1984. The Board also felt that your post-service diagnosis from the VA is temporally remote to your service and fails to draw a sufficient nexus to your underlying misconduct. As a result, the Board concluded that your misconduct was not due to mental health-related symptoms. The Board found that your active duty 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 otherwise not be held accountable for your actions. As a result, the Board determined your conduct constituted a significant departure from that expected of a Marine 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,

3/29/2024

