



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. 7191-23

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 11 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 and your response to the AO.

You enlisted in the United States Navy and commenced a period of service on 1 July 1986. On 13 October 1989, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 134, for drunkenness, Article 108, for destruction of government property, and Article 111, for drunken/reckless driving. You did not appeal this NJP. On 27 November 1989, you were formally counseled due to the above misconduct and notified that continued misconduct could result in administrative or judicial processing. In April 1990, you were medically evaluated for oversea transfer and denied any mental health symptoms or concerns.

On 5 May 1990, you received your second NJP for violating UCMJ Article 112(a), for possession of methamphetamine. You did not appeal this NJP.

On 14 May 1990, you were notified that you were being processed for an administrative separation (ADSEP) by reason of misconduct, commission of a serious offense, for possession of methamphetamine. You waived your right to consult with qualified counsel and your right to present your case at an ADSEP board. On 7 June 1990, you were discharged from the Navy for misconduct with an Other than Honorable (OTH) characterization of service and assigned an RE-4 reentry code.

You previously submitted an application to the Naval Discharge Review Board (NDRB) and were denied relief on 28 February 1991. You also previously submitted a petition to this Board, but were denied relief on 9 December 2020.

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 change your characterization of service, narrative reason for separation, and reentry code, (b) your contention that you were falsely accused of possession of methamphetamine for race-based reasons, (c) your assertion that you were struggling with undiagnosed mental health conditions during your service related to racial discrimination, and (d) the impact that your mental health had on your conduct. For purposes of clemency and equity consideration, the Board noted that you provided documentation related to your post-service accomplishments and character letters.

In your request for relief, you contend that you incurred Post Traumatic Stress Disorder (PTSD) and other mental health concerns from harassment and discrimination during military service, which mitigated the circumstances of your separation. In support of your request, you provided evidence of the Department of Veterans Affairs (VA) rating of 70% for PTSD. 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 18 January 2024. The Ph.D. noted 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 denied drug use in service and continues to claim that the illegal substance was not his. Post-service, the VA has granted service connection for PTSD that is temporally remote to military service. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, given that he denies the possession NJP and he denied mental health symptoms following the alcohol-related 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 post-service evidence from the VA of a diagnosis of PTSD. There is insufficient evidence to attribute his misconduct to PTSD.”

You provided a rebuttal to the AO on 22 February 2024, wherein you argue that you did not engage in the alleged misconduct (possession of methamphetamine) and that it was pretext to improperly separate you for racial reasons. You also argue that you were not given due process, as you didn’t waive your ADSEP rights, and that even if you did waive your rights, such waiver was unknowing. Finally, you highlight that the PTSD incurred in service was directly caused by the racism that you experienced. You also provided a detailed personal statement regarding the racism incurred during military service and character letters for the Board’s review. The Ph.D. considered your rebuttal on 29 February 2024, but as it did not contain new or materially different information, the original AO remained unchanged.

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, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved both a drug offense and driving under the influence resulting in the destruction of government property. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that such misconduct is contrary to the Navy core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of fellow shipmates. The record supports that you were notified of and waived all administrative separation rights on 14 May 1990. You specifically state, “I have read the above letter and I understand its contents.” You were examined by a medical officer at that same time, and the report did not “reveal evidence of psychosis or disabling neurosis at this time.” The Board concluded that there is no evidence to support your argument that you did not receive due process or that you did not knowingly waive your rights. You argue that the drugs were not knowingly in your possession and that they were a planted as a pretext to your removal from service for race-based reasons. However, the Board concluded that you should have presented your case at an administrative separation board with the assistance of counsel rather than waiving your opportunity to present a case in your defense.

In making this determination, the Board concurred with the advisory opinion 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. The Board noted that despite being screened for substance abuse, you denied substance dependence and failed to report that you were suffering from any mental or physical conditions that would have triggered referral for mental health treatment. The Board felt that your post-service diagnosis of PTSD is temporally remote to your service, with a rating effective date of 30 years post-service, and fails to draw a sufficient nexus to your underlying misconduct. The Board noted that you did not raise any claims of mental health concerns during your two NJPs, during your ADSEP rights advisement, during your substance abuse screening, or within your NDRB petition. 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. The Board concluded that your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization.

While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, 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,

3/25/2024

