



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. 7303-23

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 25 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 naval 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, dated 11 December 2023. Although you were provided an opportunity to comment on the AO, you chose not to do so.

You entered active duty with the Marine Corps on 10 March 1992. On 4 May 1993, you received non-judicial punishment (NJP) for drinking on duty. On 25 August 1993 and 13 December 1993, you received NJP for unauthorized absence (UA) totaling four days, two specifications of failure to report to appointed place of duty, and failure to obey a lawful order. On 13 July 1994, you received NJP for absence from appointed place of duty, disobeying a lawful order, and three days of UA. On 8 August 1994, you were enrolled into Level III Alcohol Rehabilitation Treatment Program and completed the treatment.

On 6 January 1995, you received NJP for UA totaling six hours and 10 minutes and wrongful use of methamphetamine. On 23 January 1995, your commanding officer (CO) requested a preliminary inquiry into your illegal drug use. On 25 January 1995, you received a medical evaluation from the Substance Abuse Counseling Center (SACC), which determined you to be a drug abuser and alcohol dependent. The SACC recommended you be separated from the Marine Corps and receive Level III Alcohol Rehabilitation Treatment from the Department of Veterans Affairs after discharge. On 30 January 95, the results of the preliminary inquiry was sent to your commanding officer recommending you be separation from the Marine Corps due to your continued drug use. As a result, you were notified of pending administrative separation action by reason of misconduct due to drug abuse. After you waived your rights, your CO forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to drug abuse with an Other Than Honorable (OTH) characterization of service. The SA approved the CO's recommendation and, on 21 April 1995, you were so discharged.

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 contentions that you incurred a mental health condition during military service, which contributed to your separation from the Marine Corps, you never received treatment for your drug abuse, you started using drugs after joining the Marine Corps, and you are currently drug free. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO. The mental health professional stated in pertinent part:

Petitioner contends that he did not receive treatment for his substance abuse and that this may have mitigated his misconduct leading to discharge. Medical records indicate that he was properly evaluated and referred to treatment, which he completed. He chose to use an illegal substance while in aftercare programming. Additionally, the Petitioner's misconduct was not limited to substance abuse. The Petitioner did not submit any medical evidence in support of his claim. His personal statement is not sufficiently detailed to establish clinical symptoms 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) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition other than substance abuse/dependence that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to substance abuse/dependence alone."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJPs and rehabilitation failure, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug

related 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 your misconduct could be attributed a mental health condition. As explained in the AO, you failed to submitted any medical evidence in support of your claim and your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct. Additionally, contrary to your contention that you did not receive treatment for substance abuse, your medical records clearly shows that you were properly evaluated and completed rehabilitation treatment. Finally, the Board noted that there is no evidence in your record, and you submitted none, to substantiate your contentions. 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. 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. 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,

4/3/2024

