



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

██████████
Docket No. 7884-23
Ref: Signature Date

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Dear ██████████

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 5 April 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, which was previously provided to you. 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 and began a period of active duty on 16 May 1988. On 13 December 1991, you were subject to nonjudicial punishment for a violation of Article 112a of the Uniform Code of Military Justice (UCMJ) due to wrongful use of the controlled substance - methamphetamine. You were subsequently notified of processing for administrative separation for misconduct due to drug abuse and requested a hearing before an administrative separation board, at which you continued to contest your innocence. You presented the testimony of

numerous character witnesses in support of your claim of innocence and their observations of your otherwise impeccable military character, to include your desire to apply for Navy Special Warfare. However, the members of your administrative separation board found it more likely than not that the evidence substantiated the basis of misconduct due to drug abuse and recommended your discharge under Other Than Honorable (OTH) conditions. Following administrative processing and approval of this recommendation, you were discharged, on 6 March 1992, with a 3.6 overall trait average during your enlistment.

You previously applied to the Naval Discharge Review Board (NDRB) which conducted a documentary review of your request for relief, on 6 November 1995, wherein you reiterated your claim of innocence. 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 your contentions that you served honorably for three years and nine months until making a single, purportedly inadvertent and unknowing, mistake due to your post-traumatic stress disorder (PTSD). In your personal statement, you describe experiencing trauma due to exposure to asbestos and hazardous substances, suffering from physical injuries, and missile threats you experienced during your deployment in support of Operation Desert Storm. Of note, in your personal statement, you state that in early 1992, a shipmate offered you some tea which would "take the edge off" and which you drank but then felt edgy and unsettled. You state that you failed a urinalysis the following day, which resulted in your administrative discharge for drug abuse, although you claim to have believed for years that it was a mistake with the laboratory test results. Although you provide no substantiating evidence, you further claim that this same individual was later arrested by Naval Investigative Services for dealing drugs and that he would spike his tea with methamphetamines. For purposes of clemency and equity consideration, the Board noted you submitted your degree for your Bachelor of Science in biology, your post-graduate transcripts for two years of graduate studies in bio-medical sciences, and your resume.

Because you contend, at least in part, that PTSD affected the circumstances of your discharge, the Board also considered the AO provided by a licensed clinical psychologist. 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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is 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 PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD.”

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 NJP, 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 PTSD. As explained in the AO, throughout your disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation and you provided no medical evidence in support of your claims. Additionally, although you continue to protest your innocence with respect to the drug abuse allegation, the Board observed that a properly composed administrative separation board heard all evidence regarding your potential innocence contemporaneous with the evidence of your offense and the testimony of your peers and superiors. Upon review of that evidence, the members of your separation board hearing substantiated your misconduct and recommended an OTH discharge. Absent compelling evidence to the contrary, the Board found insufficient evidenced of error or injustice to warrant disturbing that finding.

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 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 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,

4/29/2024

