



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. 8194-23

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 10 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 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 13 February 2024. Although you were provided an opportunity to comment on the AO, you chose not to do so.

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

After a period of Honorable service, you reentered active duty with the Marine Corps on 9 February 1981. On 26 October 1981, you received non-judicial punishment (NJP) for driving

while drunk and wrongful possession of marijuana. As a result, you were assigned to the Navy Alcohol Safety Action Program (NASP) and successfully completed the program on 28 December 1981.

On 28 February 1982, you successfully completed the Alcohol Rehabilitation Program. On 7 April 1982, you received NJP for driving on revoked driving privileges. On 26 July 1982, you received NJP for two specifications of failure to go at time prescribed to appointed place of duty. On 5 August 1982, you received a medical evaluation, which diagnosed you with an alcohol disorder. On 27 August 1992, you received NJP for drinking alcohol in the enlisted quarters, failure to sign restriction notice, and unauthorized absence (UA) totaling four days. Consequently, you were notified of pending administrative separation action by reason of unsuitability due to alcohol abuse. After you waived your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge with an Honorable characterization of service. However, the Staff Judge Advocate (SJA) disagreed with the CO's recommendation and recommended you receive a General (Under Honorable Conditions) (GEN) characterization of service. The SA concurred with the SJA's recommendation and directed a GEN characterization of service by reason of unsuitability due to alcohol abuse. On 18 October 1982, you were so discharged.

You previously applied to this Board for a discharge upgrade but were denied on 7 October 2015. The Board determined the mitigation evidence you submitted in support of your request was insufficient to offset the seriousness of your misconduct.

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 post-traumatic stress disorder (PTSD) and other mental health conditions following an on-base arrest in 1981 and the command failed to properly treat or diagnose your medical condition. For purposes of clemency and equity consideration, the Board noted you provide a diagnosis from the Department of Veterans Affairs.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 13 February 2024. The mental health professional stated in pertinent part:

That During military service, the Petitioner was diagnosed with and received treatment for an alcohol use disorder. Temporally remote to his military service, he has received mental health treatment for other mental health concerns from the VA that appear to be unrelated to his military service. There is no evidence of a diagnosis of PTSD. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, which appears to be related to alcohol use disorder. 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. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition, other than substance use disorder.”

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, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved 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. The Board found that your conduct showed a complete disregard for military authority and regulations. The Board also concurred with AO that there is insufficient evidence to attribute your misconduct to PTSD or a mental health condition. As pointed out in the AO, you provided no evidence to establish clinical symptoms or provide a nexus with your misconduct. Finally, contrary to your contention that you were not properly treated or diagnosed, the record clearly shows that you completed the Alcohol Rehabilitation Program and the Alcohol Safety Action Program.

As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN characterization. While the Board carefully considered the evidence you provided 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,

4/22/2024

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