



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. 8649-23
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 limitation 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 31 May 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) (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) furnished by a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the Navy and commenced active duty on 11 April 1988.

On 1 August 1988, you were found guilty at Summary Court Martial (SCM) of wrongful use of cocaine and incapacitation for proper performance of duties due to previous indulgence in intoxicating alcohol. On 26 September 1988, you were evaluated for substance abuse and found not dependent on alcohol or drugs.

On 27 September 1988, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to

drug abuse. You waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board (ADB). The Separation Authority directed your discharge with an OTH characterization of service and you were so discharged on 21 October 1988.

You previously applied to this Board for an upgrade to your characterization of service where you contended that you were promised that six months after discharge, your characterization of service would be upgraded to General (Under Honorable Conditions). The Board denied your request on 26 August 2020.

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 change your discharge characterization of service and your contentions that you had mental health issues before joining the Navy and should not have been accepted for service, that your time in the Navy accelerated your PTSD, and that you should have been provided therapy. 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 process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 8 April 2024. The AO stated in pertinent part:

Petitioner contends he incurred mental health concerns (PTSD) during military service, which might have mitigated his discharge characterization of service.

He was found guilty by Summary Court Martial in August 1988 for wrongful use of cocaine and for incapacitation at work due to intoxicating liquor. He was evaluated for substance abuse in September 1988 and based on the Petitioner's answers, was deemed nondependent on drugs or alcohol.

The Petitioner submitted a letter from a RN/LCSW dated August 2021 stating that the Petitioner experienced childhood trauma, which was exacerbated by service. No further details were provided. He submitted documentation from ■■■■■ in September 2021 where he presented for treatment for childhood PTSD and had relapsed on cocaine and alcohol. He submitted diagnostic summary from ■■■■■ from September 2021 whereby he was diagnosed with Bipolar Disorder, Most Recent Episode Depressed with Psychotic Features. He submitted a letter from ■■■■■ dated September 2022 indicating that the Petitioner began treatment for Bipolar Disorder, Anxiety and Complex PTSD. Finally, he submitted a letter from a psychiatrist at ■■■■■ indicating he had been seen twice for treatment of Bipolar Disorder, Anxiety and PTSD.

None of the post-service records elaborate on how the Petitioner's reported childhood trauma was exacerbated by service. There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service,

or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He submitted evidence of post-service diagnoses of Bipolar Disorder, Generalized Anxiety Disorder and PTSD; however, the etiology or rationale for diagnoses is not included with the evidence submitted.

The AO concluded, “it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition.”

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SCM, outweighed these 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. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit. With respect to your contention that you should not have been accepted for military service, the Board noted that you denied any mental health concerns during your enlistment process. Finally, the Board concurred with the AO and determined that there is insufficient evidence of a mental health condition that may be attributed to military service and insufficient evidence that your misconduct could be attributed to a mental health condition.

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, 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,

6/24/2024

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Executive Director

Signed by: ■