



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. 8994-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 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 20 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 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, 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 the advisory opinion (AO) furnished by a qualified mental health professional, dated 1 April 2024, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Marine Corps and began a period of active duty on 28 November 1988. On 15 October 1990, you were counseled concerning deficiencies relating to violations of the UCMJ, specifically periods of unauthorized absence (UA). You were advised that failure to take corrective action could result in administrative separation or judicial proceedings. Between 25 December 1990 to 25 May 1991, you were deployed in support of operation █. █. On 2 February 1993, you began a period of UA which lasted ten-days. On 25 January 1993, you were detained by civilian authorities and placed in confinement for a period

of eight days. Subsequently, you were released without trial, and you failed to make bond payment.

On 20 April 1993, you were convicted by special court martial (SPCM) for a period UA, breaking arrest, two instances of wrongful use of a controlled substance-cocaine, and wrongful possession of a controlled substance-0.5 grams of cocaine. You were found guilty and sentenced to a Bad Conduct Discharge (BCD), reduction in rank, confinement, and forfeiture of pay. On 20 May 1993, you requested clemency and restoration through the Naval Clemency and Parole Board. On 24 June 1993, you were counseled concerning frequent involvement with authorities, blatant disregard for the good order and discipline of the Marine, and disregard for the UCMJ. On 28 July 1993, your SPCM sentence was approved and executed. On 9 November 1993, the Naval Clemency and Parole Board denied your request for clemency and restoration. On 11 March 1994, the U.S. Navy-Marine Corps Court of Military Review determined that your SPCM findings and sentence were correct in law and fact. On 6 March 1995, you were discharged with a BCD characterization of service by reason of SPCM conviction.

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 for a discharge upgrade and contentions that: (a) your judgement was affected by your PTSD symptoms, (b) you were distraught and overwhelmed after returning from deployment, (c) you had an excellent record with multiple awards, (d) PTSD was not identified during time you were in service, (e) you received treatment, acknowledged your wrongdoings, and would like the record to reflect your positive activities while in service. 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, the Board considered the AO. 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, particularly given UA prior to his deployment. 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, "there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence the circumstances of his separation may be attributed to a mental health condition."

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 SPCM, 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. Additionally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. As explained in the AO, you provided no medical evidence in support of your claim. Finally, contrary to your contention, the Board determined your record was not excellent and was marred by multiple counselings and incidents of misconduct.

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 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 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,

6/10/2024

