



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. 9081-23
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 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 17 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, 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 and your response to the AO.

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 13 December 1976. You were attached for duty aboard the █ when, in January of 1980, it collided with a container ship. In February of 1980, you received a psychiatric evaluation after your shipmates had expressed concern for your nightmares and unusual sleeping behavior; you were diagnosed with Depressive Neurosis and both psychological and physiological alcohol dependence. A 4-day hospitalization, in April 1980, noted the same diagnoses; however, a psychiatric evaluation in May 1980, noted an additional diagnosis of immature personality [Personality Disorder] and

an alcohol use disorder (AUD) that did not exist prior to entry to active duty. In spite of having five nonjudicial punishment (NJP) actions during your first enlistment, in addition to a civil arrest in 1977 for driving under the influence (DUI), you were honorably discharged into the Naval Reserve (USNR), on 24 September 1980, within 3 months of the expiration of your contract after completing over three years and nine months service.

While in the USNR, you were again arrested by civil authorities in October 1980 for another DUI offense. You then reenlisted and began a second period of active duty on 18 February 1981. On 26 May 1982, you were convicted by Special Court-Martial (SPCM) for nine drug-related offenses under Article 92 of the Uniform Code of Military Justice (UCMJ), that included one specification for disobedience of a lawful written regulation by possessing marijuana, two specifications of wrongfully possessing marijuana, three specifications of wrongfully transferring marijuana, and, three specifications of wrongfully selling marijuana. You were sentenced to 60 days of restriction with 90 days of hard labor without confinement and reduction to the paygrade of E-1. Although you did not receive a punitive discharge notwithstanding your drug-related offenses, you were notified on 30 August 1982, of processing for administrative separation for misconduct due to drug abuse, and you elected to waive your rights incident to this notice. A recommendation for your discharge under Other Than Honorable (OTH) conditions was forwarded through Commander, Naval Personnel Command, to the Assistant Secretary of the Navy (Manpower and Reserve Affairs). The recommendation was approved and you were so discharged on 10 December 1982.

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 final discharge, your request for a review of your entitlement to awards, and your request for advancement to the paygrade of E-4. You contend that you experienced in-service trauma which resulted in post-traumatic stress disorder (PTSD) which caused you to develop night terrors, to begin ripping your fingernails off with your teeth, and to self-medicate by drinking. You state that the symptoms relating to your PTSD diagnosis go back as far as an event in September of 1979 when you witnessed the overhead explosion of a ██████████ aircraft while you were stationed in ██████████, ██████████, which resulted in the death of a close friend. You contend that your symptoms were further exacerbated when the ship you were stationed on had a collision in January 1980, after which you were diagnosed with a mental health condition. You state that this PTSD and depression led to your eventual self-medication with marijuana. You further identify clemency factors with respect to multiple post-service surgeries and health issues for which the Department of Veterans Affairs (VA) has issued a disability rating which it appears to have tied to your first period of service for purposes of your entitlement to benefits. For purposes of clemency and equity consideration, the Board noted you included provider notes from your physician and your psychologist.

Because you contend that PTSD or another mental health condition affected the circumstances which led to your misconduct and resulting discharge, the Board also considered the AO. The AO stated in pertinent part:

During military service, the Petitioner was diagnosed with an alcohol use disorder that was attributed to military service. He was also diagnosed with a depressive disorder and a personality disorder. Post-service, the VA has granted service

connection for PTSD. Unfortunately, available records are not sufficiently detailed to provide a nexus with all of his misconduct, given his problematic alcohol behavior and UA prior to the purported traumatic precipitants. While it is possible his alcohol use may have worsened due to undiagnosed PTSD, it is difficult to attribute the sale of marijuana to self-medication. 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 in-service evidence of a mental health condition that may be attributed to military service (alcohol use disorder). There is post-service evidence of a diagnosis of PTSD from the VA. There is insufficient evidence to attribute all of his misconduct to PTSD or another 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 multiple drug offenses. The Board determined that illegal drug distribution 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 fully concurred with the AO. Specifically, whereas your alcohol-related offenses and even your personal use of marijuana may have been due to your mental health issues, the Board found no nexus between your contended PTSD or mental health conditions and your conviction for multiple, serious offenses of distribution of illegal drugs. In this regard, the Board concluded that your adjudged reduction to the paygrade of E-1 was neither unjust nor erroneous and likewise with your subsequent administrative discharge under OTH conditions.

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.

With respect to your request for a review of your entitlement to awards, the Board noted that you submitted no evidence of having first sought relief from Navy Personnel Command. Because you have yet to exhaust your administrative remedies prior to requesting relief from the Board, the Board determined that your request is not yet ripe for consideration.

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,

6/10/2024

