



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. 9791-23
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 Marine Corps and commenced active duty on 20 June 1974. On 12 July 1974, you were processed and recommended for discharge for failing to disclose pre-service drug use. The Separation Authority disapproved your discharge, and you continued in-service. From 14 May 1975 to 16 May 1975, you participated in operations involving recovery of the SS Mayaguez and its crew.

On 5 June 1975, you received non-judicial punishment (NJP) for drug possession, being incapacitated for duty, and dereliction of duty. You were referred to medical for a neuropsychiatric evaluation where you stated that you had failed to disclose pre-service juvenile

breaking and entering and marijuana use, and that you used drugs (“downers,” “speed,” and “acid”) in-service. You were diagnosed with immaturity and recommended for discharge.

On 17 September 1975, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of unfitness due to apathy and involvement with drugs. You elected to consult with legal counsel and subsequently waived your rights to submit a statement or have your case heard by an administrative discharge board. The Separation Authority subsequently directed your discharge with an OTH characterization of service and you were so discharged on 20 November 1975.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) on three separate occasions for a discharge upgrade. The NDRB denied your requests for an upgrade on 22 December 1976, 19 October 1977, and 23 October 1980 based on their determination that 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 change your discharge characterization of service and your contentions that you were misdiagnosed with immaturity when you suffered from PTSD due to your participation in a recovery operation during the Vietnam conflict. For purposes of clemency and equity consideration, the Board considered your statement, the advocacy letter, and the post-service accomplishment documentation you provided, including your three business licenses.

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 12 April 2024. The AO stated in pertinent part:

Petitioner contends he incurred PTSD during military service which may have mitigated the circumstances of his separation.

- a. In January 1975, he was referred for evaluation for “stomach pains aggravated by soft drinks and beer x ½ year...has nervous problem but would like UGI [upper gastrointestinal evaluation] for possible peptic disease.”
- b. In May 1975, he participated in operations involving recovery of the SS Mayaguez and its crew. In June 1975, he requested an evaluation with a psychiatrist due to “recent problems c [with] drugs, hostile attitude.” He received NJP for wrongful possession of drugs, dereliction of duty, and incapacitation for duty.
- c. In July 1975, he was evaluated by a military psychiatrist and diagnosed with an immature personality. “He denied drug use prior to induction. However, he states that he started smoking pot at 13. He also admits to using ‘downers,’ ‘speed,’ and ‘acid.’ He uses when he can acquire...He fears being apprehended by the Japanese Police, but not so much as to quit using drugs completely.”

Petitioner contended he incurred PTSD during a combat deployment to █. He claimed he suffered from symptoms of PTSD after his return that were improperly diagnosed as vague medical complaints.

- a. He submitted the record of a February 2019 behavioral health intake with a civilian provider in which he was diagnosed with Other Specified Trauma- and Stressor-related Disorder “after experiencing an intense battle (the █ incident).”
- b. He provided a December 2018 record from his civilian physician noting mental health diagnoses of Panic Disorder and chronic PTSD.

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service, since they are not typically amenable to treatment within the operational requirements of Naval Service. Temporally remote to his military service, he has received a diagnosis of PTSD from a civilian provider that is attributed to military service. However, it is difficult to attribute his misconduct to PTSD or another mental health condition, given his pre-service substance use history that continued in service.

The AO concluded, “it is my clinical opinion there is post-service evidence from a civilian mental health provider of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another 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 NJP, 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. The Board concurred with the AO and determined that while there is post-service evidence from a civilian mental health provider of a diagnosis of PTSD that may be attributed to military service, there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition, particularly given your pre-service substance use history that continued in service.

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 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 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

