



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. 9810-23

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 17 June 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 29 April 2024. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

During your enlistment processing you disclosed marijuana possession, marijuana use, and minor traffic infractions. You enlisted in the Navy and commenced a period of active duty on 11 May 1981. On 31 March 1982, you received your first nonjudicial punishment (NJP) for a three-day period of unauthorized absence (UA). You were subsequently issued administrative remarks documenting this disciplinary action yet retaining you in the Navy and advising you that further misconduct may result not only in disciplinary action, but in processing for administrative discharge. On 1 August 1983, you received a second NJP for the wrongful use of cocaine. Despite this significant infraction, you were again issued administrative remarks retaining you in the naval service and advising you that further abuse of controlled substances may ultimately

disqualify you from receiving an honorable discharge and may result in your processing for an administrative discharge. On 21 October 1983, you completed the Navy Alcohol and Drug Safety Program course. However, in November 1984, you voluntarily self-referred for rehabilitation and disclosed you used marijuana once to twice daily, amphetamine tablets once to twice daily, and consumed approximately two to three glasses of wine once or twice weekly. You were found psychologically dependent on the use of marijuana. You were enrolled in Level II group counseling but it was noted your behavior during group was, at times, erratic and manipulative. Therefore, on 12 December 1984, you were disenrolled from Level II group counseling. On 19 January 1985, you tested positive for cannabinoids. Consequently, you were notified of your pending administrative processing for misconduct due to drug abuse and drug abuse rehabilitation failure, at which time you elected your rights to consult with military counsel and to have your case heard before an administrative discharge board. On 13 March 1985, an administrative discharge board unanimously found you committed misconduct due to drug abuse and failure to complete drug abuse rehabilitation and recommended you be discharged with a General (Under Honorable Conditions) (GEN) characterization of service. The separation authority approved the recommendation and, on 10 May 1985, you were so discharged.

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 (1) you never received a veteran's card showing four years of active duty (1981-1985), (2) you were suffering from undiagnosed bipolar disorder for which you self-medicated by using drugs, and (3) you were "gay and acting out". For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

Based on your assertions that you were suffering from undiagnosed mental health concerns during military service, which may have mitigated the circumstances of your separation, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

During military service, the Petitioner was evaluated and diagnosed with a substance use disorder, based upon the information he chose to disclose, the psychological evaluations performed, and the Petitioner's behavior throughout his military service. There is no evidence of another mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of another diagnosable mental health condition. He has provided no medical evidence to support 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 pre-service behavior that appears to have continued in service. His claimed onset of mental health concerns is temporally remote to his military service and appears unrelated. 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 conclude, “it is my clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct 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 NJPs and admission of drug abuse, 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 involvement by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses and unnecessary risk to the safety of their fellow service members. The Board noted marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Further, the Board found that your conduct showed a complete disregard for military authority and regulations. Additionally, the Board agreed with the AO that there is insufficient evidence of a mental health condition that may be attributed to your military service or misconduct. As explained in the AO, you provided no medical evidence to support your claims and your personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct, particularly given pre-service behavior that appears to have continued in service. Finally, the Board noted you were granted a large measure of clemency when you were discharged with a GEN discharge for drug related misconduct that normally warrants an Other Than Honorable characterization.

As a result, the board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN. 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.

In reviewing your record, the Board carefully considered your contention that you were gay and acting out. Since you raised the issue of homosexuality, the Board reviewed your record in light of current guidance regarding the repeal of the “Don’t Ask, Don’t Tell” (DADT) policy. Ultimately, the Board determined the current DADT repeal guidance is inapplicable to your case since you were not identified as a homosexual nor processed for homosexuality, but solely discharged based on unrelated misconduct.

In regard to your request that you be issued a veteran’s identification card showing your years of service, you may contact the nearest office of the Department of Veterans Affairs (DVA) to inquire about your eligibility for benefits and DVA identification card information by calling toll-free, 1-800-827-1000 or online at <http://www.va.gov>.

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,

7/1/2024

