



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. 10027-23
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 24 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 15 April 2024. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 12 April 1984. Prior to coming on to active duty, you signed the Navy Alcohol and Drug Abuse Screening Certificate. On 14 February 1985, you received nonjudicial punishment (NJP) for wrongfully possess and intent to use another's Armed Forces Identification Card. On 16 May 1985, you received a second NJP for wrongful use of a controlled substance-marijuana. Consequently, you were counseled concerning minor infractions in your military behavior as evidence by your previous NJP for substance abuse. You were advised that failure to take corrective action could result in

administrative separation. On 25 July 1985, you received a third NJP for stealing a tube of crazy glue from the Navy Exchange. On 28 October 1985, a Drug and Alcohol Report indicated that you had no potential for future Naval service due to your continued involvement with marijuana. On 15 October 1988, you received a fourth NJP for two instances of wrongful use of a controlled substance-marijuana and cocaine. Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct and drug abuse. After you decided to waive your procedural rights, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service. The separation authority approved the recommendation and ordered an OTH discharge characterization by reason of misconduct due to pattern of misconduct. On 29 November 1988, you were so discharged.

On 16 November 2012, this Board denied your previous request for a discharge characterization upgrade.

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 mind and overall health was negatively affected during your tour of duty, (b) you decided to use drugs to mask your pain and to help deal with your night terrors, (c) you were part of a search and rescue crew, which searched frantically for survivors of a helicopter crash, (d) you began experiencing fear, panic, headaches, sweaty palms, dizziness, and heart palpitations, (e) following the incident, you tried to numb yourself by consuming drugs and alcohol, (f) you tested positive for drugs during urinalysis and no one understood the pain you were experiencing, (g) you began using marijuana and cocaine to calm yourself down and minimize panic attacks, and (f) you are not able to have a normal social life due to depression and panic attacks. For purposes of clemency and equity consideration, the Board noted you did provide copies of the █ incident article, an incident article from the █ █ Journal, and evidence related to your medical prescription.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

There is no evidence that the Petitioner 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. 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 as the misconduct all occurred prior to the purported traumatic precipitant. 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 insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD."

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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included drug related offenses. 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. The Board noted that 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 considered the likely negative effect your conduct had on the good order and discipline of your unit. Lastly, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD or a mental health condition. As explained in the AO, your personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct, particularly as the misconduct all occurred prior to the purported traumatic incident.

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 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, _____

6/12/2024

