



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. 10158-23

Ref: Signature Date

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Dear █

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 1 July 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 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). 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 17 May 2024. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

During your enlistment processing you disclosed marijuana use and were granted an enlistment waiver. You enlisted in the U.S. Marine Corps and commenced a period of active duty on 11 July 2003. You participated in Operation Iraqi Freedom from 13 February 2004 to 16 September 2004. On 24 May 2005, you were found guilty of the wrongful use of cocaine at a summary court-martial (SCM) and sentenced to confinement for 30 days, forfeiture of \$823.00 pay per month for one month, and a reduction in rank to E-1. Consequently, you were notified of your pending administrative processing by reason of drug abuse, at which time you waived your rights to consult with counsel and to have your case heard before an administrative discharge board. On 23 February 2006, you completed the Marine drug awareness course.

Subsequently, the separation authority directed you be discharged with an Other Than Honorable (OTH) characterization of service for drug abuse and, on 11 May 2006, you were so discharged.

Your previous discharge upgrade request was denied via the Naval Discharge Review Board (NDRB) on 19 June 2008.

The Board carefully considered all potentially mitigating factors to determine whether the interest 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 your contentions that: (1) you incurred undiagnosed PTSD during military service and self-medicated with alcohol, (2) you believe you served honorably, and (3) you are not/have never been some drug user and will never be. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application, including advocacy letters expressing your need for veterans' benefits.

Based on your assertions that you incurred mental health concerns (PTSD) during military service, which might have mitigated your discharge characterization of service, 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:

The Petitioner submitted five character references from family members and a buddy statement from a fellow Marine who served with him in Iraq in 2004. He submitted what appears to be an intake conducted by a LMHC dated January 2021. The intake notes that the Petitioner did not follow up thereafter. The Petitioner indicated that he had been prescribed psychotropic medication in the past, but that he could no longer reach his previous provider. There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He did not submit any medical evidence in support of his claim. Furthermore, he stated that he had never done drugs and that he had blacked out from alcohol the night he "accidentally" ingested cocaine. This is incongruent with the fact that he entered into the Marine Corps with a pre-service drug waiver, as well as provided a letter to his Command in-service admitting use of cocaine. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

After a 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 SCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that 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. The Board noted that cocaine use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Additionally, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to your military service or your misconduct. As explained in the AO, you provided no medical evidence to support your claim and your record contains inconsistencies regarding your culpability with your drug abuse. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities.

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. 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 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,

7/17/2024

