



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

█  
Docket No. 10404-23

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, 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). Additionally, the Board considered an advisory opinion (AO) from a qualified mental health professional and your response to the AO.

You enlisted in the Navy and commenced a period of active duty on 28 November 2005. You reported aboard the █ (█), on 29 March 2006, and commenced a 28-day period of unauthorized absence (UA) on 28 April 2006. On 24 July 2006, you were found guilty of the UA at a summary court-martial (SCM) and sentenced to confinement for 20 days and forfeiture of \$637.00 for one month. On 2 October 2006, you commenced a second period of UA which lasted 242 days. Consequently, you submitted a request for an Other Than Honorable (OTH) separation in lieu of trial by court martial (SILT) after consulting with counsel. While awaiting the decision on your request, on 22 June 2007, you received nonjudicial punishment (NJP) for the wrongful use of a controlled substance. Ultimately, your SILT request was approved and, on 9 July 2007, you were so discharged.

The Board carefully weighed 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 your contentions that, (1) you incurred PTSD and other mental health concerns during military service, (2) in May 2006, you took leave because your mother's health was declining, (3) during your leave your mother was the victim of domestic abuse at the hands of her husband and you became the caretaker of your two younger siblings, causing you to go UA due to this hardship, (4) you voluntarily returned in May 2006 but was subsequently court martialed and sentenced to punishment, (5) prior to this incident you had never been in trouble and after returning you felt disowned by the military which mentally affected you, (6) post-confinement in August 2006, you were assigned to the █ and self-medicated your aforementioned trauma with marijuana, (7) you subsequently failed a random urinalysis and, once told to report to Captain's Mast, you fled thinking your punishment would be harsher, (8) in June 2007, you returned to █ on your own and were discharged, (9) you did not receive substance abuse counseling, mental health assessment, or advice about your negative change in hearing, and (10) you were later diagnosed with Chronic Adjustment Disorder with Mixed Anxiety and Depression that you attribute to solitary confinement, your military discharge, and substance abuse. For purposes of clemency and equity consideration, the Board noted you provided a copy of your DD Form 214, a personal statement, and medical and official military personnel file documents.

Based on your assertions that you incurred PTSD and other mental health concerns; a qualified mental health professional provided the Board with an AO. The AO stated in pertinent part:

There is no evidence that he 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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral or evaluation. He has received a post-service diagnosis of a mental health condition that is temporally remote to his military service and appears unrelated. Unfortunately, his personal statement is not sufficiently detailed to establish a nexus with his misconduct. 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 or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition."

In response to the AO, you submitted rebuttal evidence that provided additional clarification of the circumstances of your case. After reviewing your new evidence, the original AO remained unchanged.

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, NJPs, and SILT request, 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 marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. The Board also noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and, more likely than not, would have resulted in a punitive discharge and/or extensive punishment at a court-martial. Therefore, the Board determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and possible punitive discharge. Finally, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service or your misconduct. As explained in the AO, your post-service diagnosis of a mental health condition is temporally remote to your military service and appears unrelated.

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,

7/2/2024

