



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. 10437-23
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 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 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 28 September 1978. On 20 March 1980, you were convicted at Special Court Martial (SPCM) of possession of marijuana, resisting lawful apprehension, and sleeping on post. You were sentenced to reduction in rank to E-1, forfeitures, and confinement at hard labor. The portion of your sentence adjudging confinement at hard labor was suspended for six months, provided you did not commit further misconduct.

On 13 August 1980, you were issued an administrative remarks (Page 11) counseling vacating the suspension of a portion of your previous SPCM sentence due to your Commanding Officer observing you sleeping in a guard truck while on sentry duty.

On 4 September 1980, you were convicted at SPCM of sleeping on post. You were sentenced to forfeitures and confinement at hard labor, of which a portion of each were suspended for six months. On 18 November 1980, you received non-judicial punishment (NJP) for possession of marijuana and were issued Page 11 counseling concerning your frequent involvement of a discreditable nature with military authorities. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 27 January 1981, you received Page 11 counseling advising you that you were being recommended for administrative discharge for frequent involvement with military authorities.

Consequently, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to frequent involvement of a discreditable nature with military authorities. You elected to consult with legal counsel and requested an administrative discharge board (ADB). The ADB found that you had committed misconduct and recommended that you be discharged with a General (Under Honorable Conditions) (GEN) characterization of service by reason of misconduct due to frequent involvement of a discreditable nature with military authorities. The separation authority concurred with the ADB and, on 30 June 1981, 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 change your discharge characterization of service and your contentions that you requested assistance for mental health concerns while in service but were not supported until you received counseling from a psychiatrist two months before you were discharged. For purposes of clemency and equity consideration, the Board considered your statement, the advocacy letter, and other evidence you provided in support of your application.

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 16 May 2024. The AO stated in pertinent part:

Petitioner contends he incurred Post Traumatic Stress Disorder (PTSD) and other mental health concerns during military service, which may have mitigated the circumstances of his separation.

Petitioner provided evidence of service connection for PTSD, effective June 2021.

There is no evidence that the Petitioner received a mental health diagnosis during military service. Temporally remote to his military service, the VA has granted service connection for PTSD. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, given the lack of information regarding his substance use and his purported trauma.

The AO concluded, "it is my clinical opinion there is post-service evidence from the VA 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 SPCMs and NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved two drug 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 also considered the likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board noted that you were given multiple opportunities to address your conduct issues, but you continued to commit misconduct, which ultimately led to your administrative discharge for frequent involvement of a discreditable nature with military authorities. The Board believed that considerable clemency was already extended to you when the ADB recommended, and the separation authority approved, a GEN characterization of service. Additionally, the Board concurred with the AO that, while there is post-service evidence from the VA 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. As explained in the AO, your post-discharge diagnosis is temporally remote to your military service.

As a result, the Board concluded that significant negative aspects of your service outweighed the positive aspects and continues to warrant a GEN 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 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,

7/18/2024

