



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. 10472-23
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 10 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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 afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You previously applied to this Board for an upgrade to your characterization of service. You were denied relief on 8 October 2014 based on the statute of limitations.

You enlisted in the Marine Corps and began a period of active duty on 30 March 1970. On 12 August 1971, you were granted an exemption for your disclosure of drug usage and possession of drugs. On 17 August 1971, you received non-judicial punishment (NJP) for unauthorized absence and incapacitated for the proper performance of duty as a result of previous indulgence in intoxicating liquor. On 7 September 1971, you received a medical

evaluation which noted that you were not addicted to any drugs and did not have a psychiatric condition that required medical assistance. On 14 September 1971, you received your second NJP for failure to obey a lawful written order by partaking of alcohol in the barracks and destruction of government property.

On 14 October 1971, you were notified that you were being recommended for an administrative discharge from the Marine Corps by reason of unfitness due to unauthorized use and possession of various types of drugs. You elected your right to consult with counsel but waived your right to present your case before an administrative discharge board (ADB). On 21 October 1971, you provided a voluntary statement concerning your usage of drugs admitting to the “unauthorized use of mescaline, LSD, psilycibin, Seconal, speed, marijuana, hashish, with the frequency of six or seven times a week while stationed aboard Naval Ammunition Depot.” Ultimately, the separation authority directed your discharge from the Marine Corps with a General (Under Honorable Conditions) (GEN) characterization of service. On 26 November 1971, 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 character of service and contentions that: (1) you were told along with other Marines that the Marine Corps was downsizing, and that you could be given a “voluntary honorable discharge” if you signed a letter of release, (2) at the time of your discharge, you were suffering from “service connected, undiagnosed, and untreated PTSD,” (3) you were mentally unstable and confused due to your PTSD, and (4) you are 100% disabled due to your service-connected PTSD. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

As part of the Board’s review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 24 May 2024. The AO stated in pertinent part:

When evaluated during military service, he denied mental health concerns. Temporally remote to his military service, the Department of Veterans Affairs (VA) has granted service connection for PTSD. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, as there is insufficient information regarding the purported trauma and property damage is not a typical symptom of PTSD. 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 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.”

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 NJPs and admission of the wrongful use of controlled substances, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved multiple 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. Further, 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. As the AO explained, the available records are not sufficiently detailed to provide a nexus with your misconduct, as there is insufficient information regarding the purported trauma and property damage is not a typical symptom of PTSD. Therefore, the Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. Finally, the Board concluded you already received a large measure of clemency when the Marine Corps assigned you a GEN characterization despite your record of misconduct that supported processing under Other Than Honorable conditions.

As a result, the Board determined significant negative aspects of your active duty service outweighed the positive 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,

7/25/2024

