



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. 10580-23
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.

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 on 8 July 2024, has carefully examined your current request. 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 to 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) of a qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You previously applied to this Board and were granted partial relief on 17 March 2023. The Board, purely as a matter of clemency, upgraded your Other Than Honorable characterization of service to a General (Under Honorable Conditions) characterization. The facts of your case remains substantially unchanged, to include the evidence of your traumatic brain injuries occurring between November 1982 and March 1983 due to loss of consciousness during competitive judo tournaments.

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 that the Board reconsider its partial grant relief and, instead, further upgrade your discharge to fully “Honorable” and change your narrative reason for separation to “Secretarial Authority.” The Board noted that, other than minor changes in the argument presenting your mental health claims, you have submitted identical medical and clemency records, with the only new documents being related to the Board’s decision in your partial grant of relief. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

Because you continue to contend that post-traumatic stress disorder (PTSD) or another mental health (MH) condition contributed to your misconduct, the Board requested a new AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated on multiple occasions during his enlistment. He received no formal mental health diagnosis, other than alcohol and substance use disorders, which were noted to be in remission or not pertinent to his misconduct. His diagnoses were based on observed behaviors during his period of service, the information he chose to disclose, and the psychological evaluations performed. Post-service, the VA has granted service connection for PTSD. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. While UA could be a behavioral indicator of avoidance related to PTSD, the Petitioner’s statements indicate his UA was related to personal stressors, including marital discord and financial mismanagement, rather than avoidance of trauma reminders.

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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SPCM and failure to pay just debts, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. With respect to liberal consideration, the Board concurred with the AO regarding the clear lack of nexus between your UA misconduct or financial mismanagement and your contended PTSD. Specifically, the Board concurred with its previous decision in that you “made contemporaneous statements explaining the factors that contributed to [your] misconduct. Those explanations, which [you] carried forward in [your] current application, provide a far more likely explanation for [your] conduct than the potential unpredictable impact of an undiagnosed PTSD condition.”

The Board noted that you were granted overseas leave with the express directive to ensure your visa and passport were in order, and that you had a commercial ticket which would ensure your return travel. The Board found that you intentionally and knowingly presented, but then returned, your commercial ticket in spite of this requirement and chose to wager your timely

return travel on securing space available military transportation after you also knowingly traveled overseas without the necessary visa or passport that would have been required to return via commercial transportation. Through very specific design, you chose to disregard the orders and directives of your chain of command without concern for consequences, then you contrived to falsify records to secure military transportation after your plan failed to materialize. As a result, the Board concluded that it is highly improbable any additional mental health records might alter its current finding with respect to the manifest nature of your intentional misconduct, which ultimately resulted in the UA offense for which you pleaded guilty before the military judge at your SPCM trial.

Furthermore, you continued your pattern of financial mismanagement long after having been counseled to correct it and even after having been afforded the decision to refrain from taking your financial offenses to trial. Reviewing the written account your executive officer made in December of 1985 regarding a new report of your dishonored checks, the Board found that, when questioned about the report of these unpaid debts, you initially lied regarding the origin to conceal the dubious nature of your financial activities, in a continuation of your pattern of misconduct, and then referred your leadership to your lawyer when confronted with further questions. Finally, the Board reaffirmed that its initial, limited grant of relief was based solely upon clemency considerations, with the predominant factor being your diagnosed mental health status, in spite of the lack of nexus. Given that you presented no new, material evidence in this regard, the Board found insufficient basis to change its previous action.

Therefore, 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. In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

7/25/2024

