



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. 10689-23
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 22 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.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Navy and commenced active duty on 11 August 1986. Shortly thereafter, on 15 August 1986, you were briefed on the Navy policy on drug and alcohol abuse. On 3 September 1986, you were issued a waiver for pre-service experimental use of marijuana.

On 10 August 1987, you received a page 13 counseling for alcohol abuse in violation of ██████████ State Laws regarding age limit use of alcohol. You were advised that any further deficiencies in your performance and/or conduct would terminate the reasonable period of time for rehabilitation that the counseling/warning entry inferred and may result in disciplinary action and processing for administrative separation.

On 20 November 1987, you were convicted at Special Court-Martial (SPCM) of violating Articles 92 and 134 of the Uniform Code of Military Justice (UCMJ) for disobeying a lawful order by leaving the scene of an accident. You were sentenced to 14 days of confinement, reduction to paygrade E1, and hard labor without confinement for 45 days.

On 15 January 1988, you were disqualified from submarine service for alcohol abuse.

On 25 January 1988, you were notified of pending administrative separation processing by reason of misconduct due to commission of a serious offense, as evidenced by your SPCM conviction. You elected to consult with legal counsel and subsequently requested an administrative discharge board (ADB). However, on 17 March 1988, you submitted a conditional waiver of the ADB. Subsequently, your Commanding Officer recommended approval of your waiver request and a discharge with a General (Under Honorable Conditions) (GEN) characterization of service.

On 26 May 1988, your discharge, as recommended, was ordered. However, shortly thereafter, on 9 June 1988, your discharge was held in abeyance due to your positive urinalysis for cocaine following random testing. The following day, you requested the resulting Article 112a (drug abuse) charge to be disposed of at non-judicial punishment (NJP), and further agreed to waive your right to an administrative separation. Your request stated your understanding that if it was granted, you would accept any type of discharge recommended by your command.

On 23 June 1988, you received NJP for wrongful use of cocaine. Your punishment included forfeiture of \$345 pay per month for two months and 45 days of restriction with extra duties. On the same day, you were notified of administrative separation for drug abuse with an Other than Honorable (OTH) characterization of service. You waived your rights in the process, and on 5 July 1988, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 14 October 1994, based on their determination that your discharge was proper as issued.

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 Memo. These included, but were not limited to, your desire to change your discharge characterization of service and your contentions that the severe hazing and mistreatment you experienced, after being accused of the hit and run, ultimately led to the demise of any hope you had of having a career in the Navy, and that during your court-martial you were illegitimately found guilty and scheduled to be released with a GEN discharge. You admit to knowing there are alternatives to substance abuse, but you claim that, as a 20 year-old, you didn't know how to

deal with the nightmare you were in. You also claim to being mistreated by your command and didn't know how to deal with the situation; so you turned to substance abuse. You finally contend that, prior to the hit and run incident, your career and personal life were on track. For purposes of clemency and equity consideration, the Board considered your statement and the advocacy letter you provided.

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 23 May 2024. The AO noted in pertinent part:

During military service, the Petitioner was diagnosed with an Adjustment reaction in the context of personal and occupational stressors. There is no evidence of a diagnosis of PTSD and the Petitioner has provided no medical evidence in support of his claims. Unfortunately, there is insufficient evidence to attribute his misconduct to a mental health condition other than alcohol or substance use disorder, given pre-service problematic alcohol and substance use that appears to have continued in service.

The AO concluded, "it is my clinical opinion there is in-service evidence of a mental health condition that may be attributed to military service. There is insufficient evidence of a diagnosis of PTSD. There is insufficient evidence to attribute his misconduct to PTSD, or another mental health condition, other than his in-service diagnosed alcohol and substance use disorders.

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 SPCM and NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved 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 also considered the likely negative impact your misconduct, particularly your use of cocaine, had on the good order and discipline of your command. Further, the Board believed that considerable clemency was already extended to you on two occasions: (1) When you were recommended for a GEN discharge, rather than an OTH, following your SPCM conviction for hit and run, and (2) When your request to have your wrongful use of cocaine resolved at NJP, followed by a board waiver, was approved. Regarding your court-martial conviction, although you claim you were convicted "illegitimately," the Board found no evidence of any error or injustice in your court-martial process.

Lastly, the Board concurred with the AO and determined that there is no evidence of a diagnosis of PTSD, you have provided no medical evidence in support of your claims, and that there is insufficient evidence to attribute your misconduct to a mental health condition other than alcohol or substance use disorder. The Board agreed that, given pre-service problematic alcohol and substance use, those behaviors appear to have continued in service.

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 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,

8/5/2024

