



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. 10766-23

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 12 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider and your AO rebuttal submission.

You enlisted in the U.S. Navy and began a period of active duty service on 22 July 1985. Your enlistment physical examination, on 19 July 1985, and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms.

On 2 July 1987, you received non-judicial punishment (NJP) for the wrongful use of a controlled substance (cocaine). You did not appeal your NJP.

Consequently, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to drug abuse and you waived your rights to consult with counsel and to request a hearing before an administrative separation board.

In the interim, your drug dependency screening indicated that you were not physically or psychologically dependent on drugs. Your separation physical examination, on 10 August 1987, and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms. Ultimately, on 25 August 1987, you were discharged from the Navy for misconduct with an under Other Than Honorable conditions (OTH) characterization of service and were assigned an RE-4 reentry code.

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 for a discharge upgrade and change to your separation to reflect a Secretarial Authority discharge. You contend that: (a) your request is made for reasons of material error and material injustice, (b) you suffered a material error in discretion when your chain of command initiated administrative separation rather than attempting to provide you with counseling or helping you deal with your stress in a healthier way, (c) but for command's error, you would not have received such a harsh characterization of service, (d) you were under a tremendous amount of stress caused by your family as your mother suffered from a mental illness which placed a lot of strain on you, which altered your frame of mind and distorted your sense of right and wrong, (e) you engaged in an isolated instance of cocaine use to cope with the tremendous amount of stress caused by your family at the time; you never argued that it was right for you to use cocaine and even offered remorse and regret for a single mistake, (f) you were sufficiently punished for your drug use, (g) instead of being processed for administrative separation, your chain of command should have made more of an effort to ensure you received counseling or some form of assistance with healthier coping strategies for stress, and (h) had your command been more involved in finding you mental health counseling, you would have had the opportunity to develop better stress management mechanisms and you would have had the opportunity to demonstrate restorative value to the Navy. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

As part of the Board review process, a licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO dated 17 May 2024. The Ph.D. stated in pertinent part:

There is no evidence that she was diagnosed with a mental health condition in military service, or that she exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. She has provided no medical evidence in support of her claims. Unfortunately, her personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus

with her misconduct, particularly as it is purported one-time use. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to her misconduct) may aid in rendering an alternate opinion.

The Ph.D. concluded, "it is my clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute her misconduct to a mental health condition.

Following a review of your AO rebuttal submission that did not include any new medical evidence, the Ph.D. did not change or otherwise modify their original AO.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence of any nexus between any purported mental health conditions and/or related symptoms and your misconduct and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your drug-related misconduct was not due to mental health-related conditions or symptoms. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that illegal drug use is contrary to Navy core values and policy, renders such service members unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. The Board noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. Finally, the Board noted that your drug abuse required mandatory processing for administrative separation and, thus, the command did not have any discretion whether or not to process you for separation and instead alternatively provide you with counseling and/or an opportunity to overcome your deficiencies. Therefore, the Board was not persuaded by your contentions that a material error or injustice exists with your administrative separation processing and discharge.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. 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,

7/22/2024

