



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. 10833-23
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.

Although you did not file your application in a timely manner, the Board waived the statute of limitation 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 8 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 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 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.

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

You enlisted in the Marine Corps, began a period of active duty on 21 May 1996. On 28 May 1997, you were issued administrative counseling advising you of the potential for discharge if you did not correct your failure to conform and substandard performance of duties due to

passing bad checks, failure to honor personal obligations and debts, unauthorized absence (UA), disrespect to superiors, and lack of integrity or good judgment. On 13 June 1997, you were subject to nonjudicial punishment (NJP) for multiple violations of the Uniform Code of Military Justice (UCMJ) including Article 92, for willfully disobeying your staff noncommissioned officer-in-charge (SNCOIC) by not providing a copy of your leave and earnings statement or money order stubs, Article 92, for willfully disobeying your SNCOIC by failing to report to remedial physical training, and Article 123a, for uttering checks with insufficient funds to cover those checks. Although your punishment included 30 days of restriction with extra duty and reduction to the paygrade of E-1, your forfeitures of pay were suspended for a period of six months. Prior to the end of the month, your suspended punishment was vacated due to a second NJP involving an Article 134 violation, which is documented in a subsequent administrative counseling entry.

You then absented yourself without authority, on 22 August 1997, and remained absent until your voluntary surrender to military authority on 26 August 1997. You were subsequently tried before Special Court-Martial (SPCM) and convicted for multiple violations of the UCMJ, to include three specifications under Article 86 which, in addition to your multiple-day period of absence also included failure to go to your appointed place of duty, Article 91 for disobeying a lawful order from a noncommissioned officer (NCO) to not leave the building after returning from your UA period, Article 112a for wrongful use of methamphetamine between 14 and 21 July 1997, Article 121 for theft of an ALICE pack, identified as military equipment, and Article 134 for breaking restriction. In addition to 45 days of confinement, your sentence included a Bad Conduct Discharge (BCD). The findings and sentence of your SPCM were affirmed following completion of appellate review, and your punitive discharge was executed on 13 April 1999.

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 and change the narrative reason for your separation to "Secretarial Authority." You contend that your personal problems due to mental illness and addiction mitigate the severity of your non-violent misconduct. You express remorse and indicate that you have demonstrated exemplary post-discharge behavior over the past two or more decades. You allege that you were singled out for unfair treatment, harassment, extra physical training, and night watch duties due, in part, to racial concerns, you were ridiculed by superiors for getting married "without permission," you became disillusioned and distrustful after not getting your promised bonus, then being moved from accounting to warehouse duties, you began having headaches and your mental health deteriorated which led to poor decisions, you initially self-reported the possibility that you had unknowingly ingested drugs due to your belief that someone had put drugs into your drink at a party, which you believe unfairly resulted in your drug abuse offense, you were loaned the backpack by someone at the supply warehouse, who said that you could return it when you were done with it, except that it was assumed to be stolen when discovered in a search during your UA period, you only pleaded guilty at SPCM due to being in pre-trial confinement and despairing that you would not receive a fair trial. You further contend, due to your first, unintended exposure to methamphetamine, you have become addicted to cocaine and alcohol, which caused you to struggle with work and ultimately resulted in your incarceration for theft from 1999 until 2011, you have achieved rehabilitation of your addiction and completed your bachelor of science in computer information systems and information security, you are currently

completing an MBA with an emphasis on ethical hacking and security certification, you started a small business helping families who have lost their homes due to tax issues, and you suffer from critical illness due to end-stage renal disease requiring dialysis and a kidney transplant. For purposes of clemency and equity consideration, the Board noted you provided your counsel's brief, a personal declaration, four character letters and personal references, your diplomas and certificates, in-service and post-service health records, service records, and reference documents.

Because you contend, in part, that a mental health condition affected the circumstances of your discharge, the Board also considered the AO. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence to support his claims. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, given pre-service behavior that appears to have continued in service. 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 insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a 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 NJPs and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included 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 noted you were provided an opportunity to correct your conduct deficiencies and chose to continue to commit misconduct. Therefore, the Board found that your conduct showed a complete disregard for military authority and regulations. Additionally, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service and insufficient evidence to attribute your misconduct to a mental health condition. Finally, while the Board considered your expression of remorse for your misconduct due to "worsening mental health and poor judgement," they noted that you provided multiple reasons why you were not guilty of the misconduct that formed the basis for your BCD.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. While the Board carefully considered the evidence you submitted in mitigation and commends you on your post-discharge rehabilitation, 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 the 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 is attached 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

[REDACTED]

Executive Director

Signed by: [REDACTED]