



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. 459-24
391-22
Ref: Signature Date

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Dear ██████████

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 15 August 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 and your response to the AO.

You previously applied to this Board for a discharge upgrade and were denied relief on 26 January 2022. The facts of your case remain substantially unchanged.

You previously applied to the Naval Discharge Review Board (NDRB) seeking a documentary review of your discharge with contentions that your drug use was an isolated incident and that your post-service accomplishments warranted consideration of an upgraded discharge on the

basis of clemency. Your request was considered on 8 April 2020 but denied. With respect to your contention that your drug abuse was an isolated incident, NDRB noted that drug abuse is considered to be a serious offense which requires mandatory processing for administrative separation, regardless of grade or time in service, and that such processing usually results in an unfavorable characterization of discharge. Additionally, NDRB noted that your drug abuse was the second of two NJPs within your enlistment. With respect to your claims of post-service accomplishments, NDRB's decision reflects that you failed to provide any documentary evidence for consideration; the Board likewise observed that you did not submit any such evidence with your current request.

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 to General (under honorable conditions) with a change to your narrative reason for separation of "Secretarial Authority." You contend that it was unjust to receive an Other Than Honorable (OTH) discharge for a single instance of marijuana use which resulted from your self-medication of symptoms of PTSD. You also believe that your post-discharge character and behavior demonstrates rehabilitation and warrants consideration of clemency. For the purposes of clemency and equity consideration, you provided evidence of post-service accomplishments, a personal deposition, Department of Veterans Affairs (VA) decisions to include your disability rating decision and character of service decision, your accompanying disability benefits questionnaires for your mental health and disability claims, and a personal statement. The Board noted that the VA found your character of service to be under dishonorable conditions for its purposes, and you did not submit supporting evidence of the clemency claims you made in your personal statement.

Because you also contend that PTSD or another mental health condition affected your discharge, the Board also considered the AO, which noted in pertinent part:

The Petitioner submitted a letter from the Veteran's Consortium dated September 2023 indicating that he had been diagnosed with PTSD. He submitted VA documentation dated November 2021 indicating service connection for PTSD for "treatment purposes only." He submitted the Disability Benefits Questionnaire (DBQ) that was conducted in August 2021, which diagnosed Petitioner with PTSD due to having witnessed a fellow sailor fall overboard. There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any symptoms of a mental health condition. He did not mention the event of the sailor following overboard or any subsequent PTSD symptoms during his 2020 NDRB. His statement is not sufficiently detailed to provide a nexus with his misconduct.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

You submitted a rebuttal in response to the AO, which the licensed clinical psychologist reviewed and determined did not alter the original opinion. In your rebuttal, you argued that the VA found a nexus between your PTSD symptoms and the stressor you experienced during your

military service and that this diagnosis constitutes evidence which may excuse or mitigate your discharge.

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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included 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 noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Additionally, the Board considered the potential negative impact your UA and missing ship's movement had on your unit. The Board noted that your UA came at a time of heightened operational tempo in the midst of ongoing support to Operations IRAQI FREEDOM and ENDURING FREEDOM. Further, the Board concurred with the clinical opinion of the AO regarding the lack of sufficient evidence to establish a nexus between your PTSD diagnosis and your purported self-medication with marijuana. More significantly, as noted within the AO, the Board found it problematic with respect to the candor of your contentions that you have not previously raised the issue of PTSD or the incident with the man overboard until after the denial of your request for relief by the NDRB. Finally, as previously noted, you did not submit substantiating evidence in support of your claims of post-discharge character, although such evidence was previously considered by both NDRB, and by the Board in your first application, and found to be insufficient.

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 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,

9/11/2024

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