



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. 1257-24
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 9 September 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). In addition, the Board considered an advisory opinion (AO) from qualified mental health professional and your response to the AO.

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 on the evidence of record.

During your enlistment processing you disclosed marijuana use and traffic infractions. You enlisted in the U.S. Navy Reserve and began a period of active duty on 14 November 1984. On 20 November 1984, you were briefed on the Navy's drug and alcohol abuse policy.

On 8 October 1986, you received nonjudicial punishment (NJP) for resisting apprehension, assault, and drunk and disorderly conduct. You received a second NJP, on 14 November 1986, for the wrongful use and possession of marijuana. As a result, you were notified of pending administrative processing due to drug abuse. However, you failed to exercise your procedural rights and subsequently began a period of unauthorized absence (UA). On 20 January 1987, you were found guilty by a summary court-martial (SCM) for the UA which lasted 46 days and for missing ship's movement. You were sentenced to confinement at hard labor for 20 days, restriction for 10 days, and forfeiture of \$150.00 pay per month for one month. Further, you received a medical drug evaluation and found not to be drug dependent and an alcohol abuser without dependence. While on restriction, you missed seven musters that resulted in a third NJP on 24 February 1987. Ultimately, your commanding officer recommended you be discharged with an Other Than Honorable (OTH) characterization of service. The separation authority approved the recommendation and on 20 March 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, on 25 October 1988, after determining 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 Memos. These included, but were not limited to, your desire to have your discharge upgraded and contentions that: (1) you incurred PTSD in service, (2) you experienced hazing and harassment, witnessed a fatal incident involving someone being sucked into a jet engine intake, and lived in constant fear for your life while working on the flight deck, (3) as a result, you began abusing alcohol and drugs during your time in the Navy and after your discharge, and (4) you recently were awarded disability status with the social security administration but have been drug-free for 25 years and are now a productive member of society. For the purposes of clemency and equity consideration, the Board you did not provide documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 18 July 2024. The AO stated in pertinent part:

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. His statement is not sufficiently detailed to provide a nexus with his misconduct. Additional records (e.g., mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

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."

On 13 August 2024, you submitted a rebuttal in response to the AO. After reviewing your rebuttal evidence, the AO remained unchanged.

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 SCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and that 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 illegal drug use in any form is still against the Department of Defense regulations and not permitted for recreational use while serving in the military. Additionally, the Board found that your conduct showed a complete disregard for military authority and regulations. Finally, the Board concurred with the AO that there is insufficient evidence of a mental health diagnosis that could be attributed to military service or your misconduct. As explained in the AO, your statement is not sufficiently detailed to provide a nexus with your misconduct.

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 and commends you for 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. 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,

10/2/2024

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Executive Director

Signed by: █