



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. 1523-24
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 26 August 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 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 based on the evidence of record.

You previously applied to this Board for a discharge upgrade and were denied on 26 November 2017 and 10 July 2020. The facts of your case remain substantially unchanged.

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 characterization of service to gain access to Department of Veterans Affairs (VA) medical benefits. You contend that you need professional help from the VA; specifically, medical privileges for help with your PTSD. You further contend that, although you did wrong while on active duty, you've since been getting help and now need professional medical help. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application including your personal letter and medical documentation from various service providers.

Based on your assertion that you suffered from a mental health condition while on active duty, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 21 June 2024. The AO noted in pertinent part:

During military service, the Petitioner was evaluated and received a diagnosis of Adjustment Disorder. Post-service, the Petitioner has received civilian treatment for a diagnoses of PTSD and another mental health condition that are temporally remote to his military service. Although there is some evidence to attribute his diagnosis of PTSD to military service, there is insufficient evidence to attribute his post-service diagnosis of depression to military service. Additionally, there is insufficient evidence to attribute his misconduct to PTSD or another mental health condition. Unfortunately, his personal statement is not sufficiently detailed to establish a nexus with his misconduct, as provided medical records attribute the onset of his PTSD diagnosis to age 61. Previous statements from the Petitioner indicate that his decision to test positive for drug use was related to a desire for separation from service so that he could pursue a separate career in professional basketball. More weight has been given to the Petitioner's previous statements and timing of misconduct and symptom onset over contentions that misconduct was to self-medicate undiagnosed symptoms of PTSD. 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 post-service civilian evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition."

After reviewing your rebuttal evidence, the AO remained unchanged.

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 six NJPs, outweighed these mitigating factors. In making this finding, the Board considered the likely negative impact your frequent absences and repeated misconduct had on the good order and discipline of your command, and that you were given opportunities to address your conduct issues but continued to commit misconduct. The Board also considered the seriousness of your misconduct and the fact it involved more than one 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. 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. The Board also found that your conduct showed a complete disregard for military authority and regulations.

Additionally, the Board concurred with the AO and determined that, although there is post-service civilian evidence of a diagnosis of PTSD that may be attributed to your military service, there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As the AO noted, you were evaluated during military service and received a diagnosis of Adjustment Disorder. You were not diagnosed with PTSD until age 61 and your personal statement is not sufficiently detailed to establish a nexus between this diagnosis of PTSD and your misconduct. The Board also agreed it is appropriate to give more weight to your previous (conflicting) statements and timing of misconduct and symptom onset, over your current contentions that your misconduct was due to self-medicating undiagnosed symptoms of PTSD. Finally, the Board observed that you provided no evidence, other than your personal statement, to substantiate your current contentions. The Board observed these contentions have evolved in your pursuit of relief while the evidence has remained largely the same.

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,

9/8/2024

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