

DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS 701 S. COURTHOUSE ROAD, SUITE 1001 ARLINGTON, VA 22204-2490

> Docket No. 1775-24 Ref: Signature Date

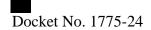
Dear

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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

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.

After disclosing pre-service marijuana use, disorderly conduct and shoplifting offenses, and receiving a waiver for your Army Delayed Entry Program (DEP) discharge for failing to disclose pre-service drug use and civil offenses, you enlisted in the Navy and commenced active duty on 26 September 1989.



On 10 December 1991, you commenced a period of unauthorized absence (UA) that ended in your surrender on 13 December 1991. On 21 January 1992, you commenced a period of UA that ended in your apprehension on 21 March 1992. On 27 April 1992, you commenced a period of UA that ended in your apprehension, on 16 May 1992, after you were found unconscious and treated at a civilian hospital. While in the emergency room, the medical personnel detected alcohol on your breath and performed a drug screen where you tested positive for marijuana and cocaine.

On 25 June 1992, you were found guilty at Special Court Martial (SPCM) of two specifications of unauthorized absence and wrongful use of marijuana and cocaine. You were sentenced to reduction in rank to E-1, confinement, and a Bad Conduct Discharge (BCD). Subsequently, the findings and sentence in your SPCM were affirmed and you were issued a BCD on 3 February 1993.

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 change your discharge characterization of service and your contentions that you incurred PTSD during a deployment to the Middle East, were "caught up" in riots when your ship was in port for decommissioning, were bullied, robbed, and afraid to go back to your ship because your attackers knew what ship you were on, you then returned to your ship and received punishment, and the next time you were able to leave the ship, you were kidnapped and beaten for not buying drugs and ended up in the hospital from the beating. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 17 July 2024. The AO stated in pertinent part:

Petitioner contends he incurred Post Traumatic Stress Disorder (PTSD) during military service, which may have contributed to the circumstances of his separation. He denied mental health symptoms during a May 1990 examination in preparation for overseas assignment. From January to March 1992, the Petitioner was on unauthorized absence (UA) for 59 days. In March 1992, he was evaluated and found fit for confinement.

From April to May 1992, the Petitioner was UA for 29 days. He was hospitalized in a civilian hospital after he was "found unconscious, apparently beaten about the face." He was admitted "for observation. Hospital course unremarkable...Drug screen +THC/cocaine."

[Petitioner] denied mental health symptoms during his separation physical.

Petitioner contended he incurred PTSD from a deployment during Operation Desert

Shield/Storm. He claimed that when his ship returned, "Me [sic] and some of my shipmates was [sic] bullied around and robbed for money...I was hiding from them. I didn't report back because knew [sic] what ship I was on...I got jumped...and they really kidnapped me for ransom...One day I tried to run and they beat me up again and I was put in the hospital...then the military found me."

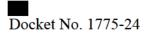
There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given preservice behavior.

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

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 your 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. The Board also considered the likely negative impact your misconduct had on the good order and discipline of your command. Additionally, the Board concurred with the AO and determined that there is there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service and insufficient evidence to attribute your misconduct to PTSD or another mental health condition. Therefore, the Board 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. Finally, the Board noted you provided no evidence, other than your statement, to substantiate your contentions.

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. 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.

