



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. 1938-24
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.

A three-member panel of the Board, sitting in executive session, considered your application on 17 October 2024. The names and votes of the members of the panel 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, applicable statutes, regulations, and policies, to include the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). In addition, the Board considered the 22 July 2024 Advisory Opinion (AO) provided to the Board by a Licensed Clinical Psychologist and your rebuttal response to the AO.

A review of your record shows that you entered the Navy and began initial active duty training on 27 July 2007. In October 2009, you were diagnosed with Attention Deficit/Hyperactivity Disorder (ADHD), Combined Type. You underwent treatment through January 2010 and you were prescribed a stimulant (Adderall) and an antidepressant (Wellbutrin). In September 2011, you were referred to psychiatry, seen by a psychiatric nurse practitioner, and diagnosed with ADHD, and Depressive Disorder Not Otherwise Specified. You were prescribed Zoloft and Adderall. You attended follow-up appointments in March and April 2012 but did not undergo a follow-up appointment with your nurse practitioner until September 2013. During that appointment you reported you were “continuing to do well with regard to depressive symptoms and feels that dose of Zoloft...remains effective...with positive symptom remission.” In April 2015, you reported a return of ADHD symptoms, and you were prescribed Adderall. In December 2015 you returned to mental health “for increased depression and anxiety in the context of relational stressors.” You were diagnosed with Adjustment Disorder with Mixed

Based on your assertions that you incurred a mental health condition during your military service, which might have mitigated your discharge character of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

While there is evidence of acute psychosis during periods of intoxication, the medical records indicate that the Petitioner's mental competency returned once he was not under the direct influence of methamphetamine. The Petitioner was followed in after-care treatment for nine months, during which time he was actively participating in treatment and giving appropriate, empathic feedback to other participants of substance use aftercare... There is no evidence of the Petitioner was unable to distinguish right from wrong or understand the significance of his legal situation. In fact, the October 2022 sanity board found he was mentally competent. Medical records indicate abstinence from methamphetamine after his December 2021 psychiatric hospitalization. Although he did have two recorded lapses in alcohol use while he was participating in aftercare, these instances were not sufficiently disruptive for him to be dismissed from the program.

The AO concluded, "it is my clinical opinion there is insufficient evidence in the service medical record that the Petitioner's in-service mental health conditions made him unable to participate in his defense or make rational decisions regarding accepting NJP.

In response to the AO, you argued that as a result of being prescribed Adderall for 12 years, a highly addictive medication, you were predisposed to develop a SUD. Moreover, you contend that your drug use was a way to self-medicate and the misconduct, drug abuse, should be attributed to the underlying mental health conditions. You provided a National Institute of Health article as support.

After thorough review, the Board disagreed with your rationale for relief. In keeping with the letter and spirit of the Kurta Memo, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced, and their possible adverse impact on your service, to include whether they qualified you for the military disability benefits you seek.

First, the Board concurred with the AO that there was insufficient evidence of lack of mental judgment. The Board observed that an October 2022 sanity board found (1) your mental health conditions did not make you unable to understand the wrongfulness of your conduct (abusing drugs) and (2) your mental health conditions did not prevent you from being able to understand the nature of the proceedings against you or unable to cooperate intelligently to your defense. Second, the Board determined you were ineligible for disability processing since service regulations directed misconduct processing to supersede disability processing. There is sufficient evidence in the record that your mental health conditions were known and considered by the proper authorities when the decision to administratively separate you was determined. Consequently, the Board found that you were properly dual processed in accordance with existing guidance and appropriately discharged for your misconduct instead of being placed on the Permanent Disability Retired List. Third, the Board observed you were treated for mental

health conditions for over twelve years in service. Throughout your service, no medical professional placed you on limited duty or referred you to the Disability Evaluation System (DES) for a mental health condition. In fact, you agreed to enter the DES for your physical disability issues and did not claim your mental health prevented you from staying in service.

As a result, even in light of the Kurta Memo and reviewing the record holistically, the Board found your misconduct outweighed any mitigating factors and determined there was no 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,

11/23/2024

