



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. 2026-24
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 16 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 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 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 afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 24 May 1989. On 26 May 1989, you were briefed on the Navy's drug and alcohol abuse policy. On 10 September 1990, you received nonjudicial punishment (NJP) for failure to obey an order or regulation. At that time, you were issued administrative remarks retaining you in the Navy while documenting the aforementioned deficiency and advising you that any further deficiencies in your performance and/or conduct could result in disciplinary action and potential processing for administrative discharge. On 27 August 1992, you received a second NJP for the wrongful use of cocaine.

Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to commission of a serious offense and drug abuse. Prior to electing your rights, you presented yourself for a medical evaluation. The medical provider found you were not psychologically or physiologically dependent on drugs and recommended you be processed for administrative discharge. You subsequently elected your rights to consult with counsel and to present your case to an administrative discharge board (ADB). On 29 October 1992, an ADB was convened and found that you committed misconduct and recommended your administrative discharge from the Navy under Other than Honorable (OTH) conditions. The commanding officer forwarded your administrative package to the separation authority (SA) concurring with the ADB's recommendation. Ultimately, the SA directed your OTH discharge from the Navy by reason of misconduct due to drug abuse and, on 7 December 1992, you were so discharged.

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 for a discharge upgrade and your contentions that: (1) You completed three years and six months of military service with a commendable record, free of any offenses; (2) you began using alcohol to cope with the mental and physical challenges experienced at your command, which led to the development of an alcohol use disorder; and (3) this ultimately resulted in experimentation with other substances, culminating in your discharge. For purposes of clemency and equity consideration, the Board considered your personal statement.

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 10 July 2024. The AO stated in pertinent part:

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. He has provided no medical evidence to support 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 statements that his substance use was one-time, accidental use. 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 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 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 involved 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 also considered the likely negative impact your misconduct had on the good order and discipline of your command. Finally, the Board concurred with the Advisory Opinion (AO) that there is insufficient evidence of a diagnosis of PTSD or any other mental health condition attributable to military service or your misconduct. As explained in the AO, you provided no medical evidence in support of your claims and your personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct. Therefore, the Board determined that the evidence of record did not demonstrate that you were not responsible for your actions, nor did it suggest that you should not be held accountable for your conduct. Finally, the Board noted that you did not provide any supporting evidence, other than your personal 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 an OTH. 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 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,

10/4/2024

