



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

██████████
Docket No. 2060-24
Ref: Signature Date

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Dear ██████████

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 20 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 to 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) of a qualified mental health provider and your response to the AO.

You enlisted in the Marine Corps and began a period of active duty on 24 October. You served for more than three years without incident; however, you were administratively counseled on 17 December 1997 that you were not recommended for promotion to the paygrade of E-4 due to an unauthorized absence (UA) from your place of duty on 25 November 1997. On 21 May 1998, you were sent for substance abuse screening but refused to answer any questions. On 3 June 1998, you were found guilty by a summary court-martial (SCM) for wrongful use of marijuana.

On 29 October 1998, you were tried by Special Court-Martial (SPCM) and pleaded guilty to multiple violations of the Uniform Code of Military Justice (UCMJ), to include: two specifications under Article 92 for violating an order and, for a violation of Article 112a by

wrongful use of marijuana on at least two occasions. Your adjudged sentence included 60 days of confinement, forfeiture of \$600 pay per month for two months, and a Bad Conduct Discharge (BCD). Following affirmation of the findings and sentence by the Navy-Marine Corps Court of Criminal Appeals, your BCD was ordered executed, and you were discharged accordingly on 21 August 2000.

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 discharge, to restore your rank prior to your SPCM conviction, and to identify your period of Honorable service consistent with that identified by the Department of Veterans Affairs (VA) in its decision regarding your character of service. The Board also considered your contention that you served honorably for approximately four out of your six years of service and that you attribute your alcohol and drug use to self-medication for symptoms of post-traumatic stress disorder (PTSD) that the VA has rated as a service connected disability. You also contend that you subsequently developed a schizoaffective disorder. For purposes of clemency and equity consideration, you submit a letter from your Veteran Services Officer (VSO) with VA records documenting decisions regarding your disability rating, unemployability, character of service, and claim statement, a submission submitted to the Naval Discharge Review Board, and relevant references regarding policies which the Board applies to its review of records.

Because you contend that PTSD or another mental health (MH) condition affected the circumstances of the misconduct which resulted in your discharge, the Board also considered the AO, which noted that you submitted a letter from your VSO identifying diagnoses of service-connected PTSD and schizoaffective disorder. However, the licensed clinical psychologist observed that, other than your post-discharge rating for a service-connected condition:

No supporting documentation, e.g., Disability Benefits Questionnaire (DBQ), or any other psychiatric evaluations were provided in support of his claim. Thus, the etiology or rationale for his diagnoses is [not] contained within his petition. 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.

As a result, the clinical opinion concluded that "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."

After reviewing your rebuttal evidence, the AO was changed as follows:

I have reviewed Petitioner's additional documents. It appears as through the author of the DBQ was privy to mental health documents that are not contained within Petitioner's available service record. Original Advisory Opinion is revised as follows: There is sufficient evidence that the Petitioner has post-service mental

health diagnosis and conditions. There is insufficient evidence that his misconduct was due to a mental health condition.

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 SCM and 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 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. Further, the Board found that your conduct showed a complete disregard for military authority and regulations. Additionally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. Specifically, absent sufficient evidence to identify a nexus between your substance abuse misconduct and your contended experience of PTSD during your military service, the Board determined that the severity of the offenses for which you were convicted by SPCM and for which your adjudged sentence included a BCD substantially outweighed your post-service diagnosis of PTSD. 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.

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. Additionally, the Board found no basis to change your narrative reason for separation or paygrade. 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 the 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 is attached 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,

10/28/2024

