



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. 2313-24
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 23 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 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 January 2024. 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 and compensation benefits along with your contentions that justice requires you receive services such as health care and mental health treatment, as well as service-connected disability benefits. You further contended that the liberal consideration standard for PTSD enumerated in the Hagel Memorandum should be applied because you were diagnosed with PTSD after your Persian Gulf deployment. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application, including your VA claims application, an NLS Legal Letter responding to the Board, an additional NLS Legal Letter, a VA Letter establishing that you are a ██████████ veteran, a medical record of your left knee pain, a ██████ psychology questionnaire, a VA Decision document, medical records from ██████████ Health, and your personal statement.

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 20 August 2024. The AO noted in pertinent part:

The Petitioner submitted extensive outpatient records from ██████████ where he was seen from July 2020 to June 2023. Up until 2022, his diagnoses given are as follows: Intermittent Explosive Disorder, Alcohol Use Disorder, Moderate, Dependence, Substance or Medication-Induced Depressive Disorder, Substance-Induced Anxiety Disorder, Cannabis Abuse, Other Psychoactive Substance Dependence, Uncomplicated, Opioid Use Disorder, Severe, in Sustained Remission, Insomnia due to Other Mental Disorder, and Mental Disorder, Not Otherwise Specified. In May, June, July, August and September of 2022, notes indicate that the Petitioner “denied symptoms of PTSD that include unwanted memories, nightmares, flashbacks, emotional distress resulting from trauma, etc.” Records note a PTSD diagnosis was added in June 2023. In July 2023, the Petitioner indicated that he witnessed the ██████ shooting, the ██████████ al and the mass shooting at the ██████████ ██████████.” Notes following this date indicate when screened for PTSD, the Petitioner also mentioned exposure to combat during OIF.

He also submitted two outpatient records from the VA: In July 2020, he presented for an alcohol abuse screening, and in October 2020, he called the suicide hotline. The notes also indicate that the Petitioner was homeless and seeking Mental Health treatment at that time.

He submitted VA compensation and pension letter dated July 2024 noting “service connection for treatment purposes only.”

Finally, he submitted a letter dated February 2021 from a Psychiatric Nurse Practitioner noting a summary of diagnoses received from ██████████ Health – all noted above.

There is no evidence that the Petitioner was diagnosed with a mental health condition or suffered from PTSD while in military service or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. The Petitioner submitted over 300 pages of treatment records from ██████████ Health whereby he was treated for several post-service diagnoses that are temporally remote to service. Of note is that several diagnoses are “substance-induced”

The AO concluded, “it is my considered clinical opinion there is sufficient evidence of multiple post-service mental health conditions that are temporally remote to service. There is insufficient evidence that his misconduct could be attributed to a 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 your NJP for unauthorized absence and wrongful use of marijuana, 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 further 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 multiple post-service mental health conditions that are temporally remote to service, there is insufficient evidence to attribute your misconduct to a mental health condition. As the AO noted, there is no evidence that you were diagnosed with a mental health condition or suffered from PTSD while in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. While the Board considered your argument that the VA determined your PTSD is service connected, they concluded this determination is insufficient to support a nexus to your misconduct since eligibility for a disability service connection by the VA is simply manifestation-based. The Board does not dispute that you likely suffer from delayed onset PTSD as your representative contends in her brief; however, the fact your symptoms exhibited themselves after your discharge and currently impact your quality of life does not necessarily create a nexus with the misconduct you committed while on active duty, during which you displayed no symptoms.

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,

10/15/2024

