



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. 2908-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 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 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, 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)/mental health condition (MHC) (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, dated 31 July 2024. 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 28 September 1995. Upon your enlistment, you denied and drug and alcohol related involvement. On 7 May 1996, you were evaluated by a medical officer as a result of depression and failure to adapt to the Navy way of life. During the evaluation, you admitted to possessing and selling controlled substances. Ultimately, you were diagnosed with Severe Adjustment Disorder with depressed mood, Personality Disorder with Antisocial Borderline, Passive Aggressive and Avoidance Features.

Consequently, you were notified of the initiation of administrative separation proceedings by reason of convenience of the government due to personality disorder and defective enlistment and induction due to fraudulent entry into the naval service. You decided to waive your procedural rights and your commanding officer recommended an Other Than Honorable (OTH) discharge characterization. On 10 July 1996, the separation authority approved the recommendation and ordered your discharge by reason of fraudulent entry into military service due to drug abuse. On 28 July 1996, 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 contentions that: (a) you would like to receive compensation for your metal health condition, and (b) your mental health condition contributed to your discharge, still impacts your life today, and you continue to receive mental health counseling. For purposes of clemency and equity consideration, the Board noted you provided your Mental Health Evaluation, Chronological Record of Care, and your Department of Veterans Affairs (VA) Post-Discharge Medical Progress Notes.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His mental health diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed. His poor performance in-service appears to be consistent with his diagnosed personality disorder. It is likely that if his pre-service behavior had been disclosed during his pre-enlistment physical, he would not have been found fit for enlistment. 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 in-service and post-service evidence from the VA of a mental health condition (adjustment disorder) that may be attributed to military service. There is insufficient evidence to attribute the circumstances of his separation to a mental health condition, other than personality disorder."

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 admission of preservice drug related misconduct, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact you intentionally failed to disclose preservice criminal conduct in order to fraudulently enlist in the Navy. Further, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities. In addition, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. Finally, the Board determined you gained entry into the Navy through fraudulent means, served

only 10 months, and admittedly refused to perform ordered tasks 50% of the time due to your problem with authority; therefore, the Board concluded you should not benefit any further from your misconduct. Despite your fraudulent entry, the Board noted you have treatment access to the VA for your mental health conditions and concluded that fact alone eliminates any injustice in your case.

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 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 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

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