



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

█
Docket No. 4658-24
Ref: Signature Date

█
█
█
█
█

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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 25 October 2024, has carefully examined your current request. 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider. Although you were provided an opportunity to respond to the AO, you chose not to do so.

On 11 February 2022, this Board denied your initial discharge upgrade petition. The facts of your case remains 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 Hagel, Kurta, and Wilkie

Memos. These included, but were not limited to, your desire for a discharge upgrade and change to your reason for separation. You contend that: (a) your choice to use an illicit substance was the desperate act of a young man in need of mental health treatment, (b) but such mental health treatment was not forthcoming because mental illness was, and still is, shrouded in stigma and shame for members of the United States military, (c) you now fight a daily battle for your own survival, a fact that both your medical records and health care providers reflect, (d) you did whatever you could to cope and your misconduct was not willful because you were experiencing a mental health crisis at the time and not acting deliberately, (e) your positive urinalysis was the result of weightlifting supplements, and (f) your service was honest, honorable, faithful, and meritorious. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO dated 9 September 2024. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner contended he incurred PTSD in 2000 while visiting ██████████ on liberty, when he was held at gunpoint and his girlfriend was raped. He claimed his symptoms were exacerbated in May 2003 witnessing trauma related to Operation Iraqi Freedom. He contended, "I used steroids to deal with my mental health issues directly after the traumatic instances and years following the traumatic instances...The 'legal' anabolic steroids-enhanced my ability to perform and it is what I depended on to deal with my mental health issues."

There is no evidence that he was diagnosed with a mental health condition in military service. When evaluated in service, he denied symptoms of alcohol use disorder and denied intentional cocaine use in service. He continues to deny intentional substance misuse. There is post-service evidence from VA providers that he has been diagnosed with mental health concerns attributed to military service. These providers attribute his steroid use in service and post-service to his mental health concerns. Unfortunately, the evidence provided in this petition is insufficient to establish a nexus between his misconduct and PTSD or another mental health condition, given his repeated denial of intentional or willing cocaine use.

The Ph.D.'s AO concluded, "it is my clinical opinion there is post-service evidence from the VA of diagnoses of PTSD and other mental health concerns 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 these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, 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. However, the Board concluded that there was no convincing evidence of any nexus between any potential mental health conditions and/or related symptoms and your misconduct and determined

that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your drug-related misconduct was not due to mental health-related conditions or symptoms. Even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your drug-related misconduct far outweighed any and all mitigation offered by such mental health conditions. Additionally, the Board determined the record reflected that your misconduct was intentional and willful, and demonstrated you were unfit for further service. The Board also 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.

Moreover, the Board determined that it was factually impossible for you to test positive for cocaine through the use of anabolic steroids. The Board noted the Navy Drug Lab expert's testimony at your Adsep Board where he stated that steroid use would not result in a positive urinalysis for cocaine. The Board also noted the expert's testimony where he opined that, to obtain the cocaine metabolite level in your system, it would involve repeated exposure to the drug. Thus, the Board unequivocally concluded that your cocaine use was knowing and wrongful, and any innocent/unknowing ingestion defense and/or your outright denial of cocaine use was without merit.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The Board determined that illegal drug use by a Sailor is contrary to Navy core values and policy, renders such Sailors unfit for duty, and poses an unnecessary risk to the safety of their fellow shipmates.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. 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,

11/18/2024

█

Executive Director

Signed by: █