



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

██████████
Docket No. 4720-24
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 21 October 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) of a qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the Navy with a waiver for pre-service drug use and arrest for trespassing and began a period of active duty on 18 March 1982. On 18 February 1983, you were subject to nonjudicial punishment (NJP) for a violation of Article 134 of the Uniform Code of Military Justice (UCMJ) for wrongful use of marijuana. In addition to administrative counseling advising you to stop using illegal drugs and seek assistance toward that end, you were referred to medical for a substance abuse evaluation. On 8 March 1983, a substance abuse report advised that you had a fair prognosis for further service following the results of that evaluation. However, you had a second marijuana offense shortly thereafter which resulted in a second NJP on 2 April

1983. However, but you were permitted to continue serving at that time. Several months later, your striker designator was removed due to substandard performance of duty. While in a leave status, a naval officer caught you smoking marijuana, which resulted in your third NJP, on 24 January 1984, for wrongful use of a controlled substance. A follow-on substance abuse report advised that you were being processed for administrative separation in light of your three NJPs for drug abuse. A command message, submitted on 3 February 1984, documented that you had been notified of processing for administrative separation by reason of misconduct due to drug abuse, had elected to waive your right to a hearing before an administrative board, and recommended that you be separated under Other Than Honorable (OTH) conditions. The separation authority approved the recommendation, and you were so discharged on 17 February 1984.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie, Kurta, and Hagel Memos. These included, but were not limited to, your desire to upgrade your discharge to “Honorable” and your contentions that you were a 20 year old with a problem smoking marijuana due to a psychiatric problem of addiction; which was documented in your final medical exam. You believe that you were a good sailor, completing your “A” school third in your class, and serving your country for two years during which you completed two Mediterranean cruises aboard a frigate. You also contend that you admitted to your misconduct and accepted your punishment without denying your drug use but were never offered rehabilitation or substance abuse counseling. For purposes of clemency and equity consideration, the Board noted you provided a personal statement but no documentation describing post-service accomplishments or advocacy letters.

Because you contend that a mental health condition affected the circumstances of the misconduct which resulted in your discharge, the Board also considered the AO. The AO stated in pertinent part:

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, nor did he submit any medical evidence in support of his claim. 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.

The AO concluded, “it is my considered clinical opinion 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 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 NJPs, 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 concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service and there is insufficient evidence that your misconduct could be attributed to a mental health condition. In this regard, the Board noted that substance use disorders, taken alone and absent other mental health conditions or contributing factors, are not normally considered to be a mitigating factor for drug abuse misconduct. 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 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 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,

11/14/2024

