



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

██████████
Docket No. 4744-24
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 30 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, 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). In addition, the Board considered an advisory opinion (AO) from a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the U.S. Navy and entered active duty on 7 July 1981. Upon entry onto active duty, you were granted a waiver for illegal use of a controlled substance while in the Delayed Entry Program.

On 18 October 1982, you received non-judicial punishment (NJP) for two days unauthorized absence (UA). You were subsequently issued a counseling warning that further misconduct may result in disciplinary action but also in processing for administrative discharge. On 26 February

1983, you received your second NJP for one day UA. On 11 April 1983, you received your third NJP for three days UA. On 18 May 1983, you were screened for alcohol and drugs and recommend for Level III treatment. On 3 June 1983, you received your fourth NJP for wrongful use of marijuana.

Consequently, you were notified for separation for drug abuse and elected an administrative discharge board (ADB). On 28 June 1983, the ADB found you committed misconduct and recommended your discharge with an Other Than Honorable (OTH) characterization of service. The Separation Authority accepted the ADB recommendation, directed you be discharged, and offered treatment prior to your discharge. On 19 September 1983, you requested treatment due to drugs and or alcohol dependency. That same day, you withdrew your request for treatment in order to commence your discharge from the Navy. You were so discharged on 3 January 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 Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that your NJP decision overlooks your attempt to request help for alcoholism and subsequent drug abuse, it also overlooked your chance to retain your active duty status, and your OTH was too harsh in your case. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board review process, a licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO dated 10 September 2024. The Ph.D. stated in pertinent part:

During military service, the Petitioner was appropriately evaluated and diagnosed with an alcohol use disorder. There is no evidence that he was diagnosed with PTSD or another mental health condition in military service. He has provided no medical evidence of his claims. Unfortunately, the Petitioner's personal statement and the VA records are not sufficiently detailed to provide a nexus his misconduct, particularly given pre-service substance use that appears to have continued in service. 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 Ph.D. concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition, other than alcohol or substance use 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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included 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. Further, the Board concurred with the AO and determined there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition, other than alcohol or substance use disorder. As explained in the AO, there is no evidence that you were diagnosed with PTSD or another mental health condition in military service and did not provide any medical evidence of your claims. Furthermore, regarding your contentions that the NJP decision denied you rehabilitation treatment, the Board noted the record reflects you were offered treatment but ultimately declined it. Finally, the Board determined it was within your commanding officer's authority and discretion to impose NJP for your drug abuse. The Board found no evidence this authority or discretion was abused 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. 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. 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,

11/19/2024

