



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

██████████
Docket No. 4812-24
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 limitations 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 13 November 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)/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 an advisory opinion (AO) from a qualified mental health professional, dated 27 August 2024. Although you were provided an opportunity to comment on the AO, you chose not to do so.

You entered active duty with the Navy on 9 October 1979. On 2 April 1981, you received non-judicial punishment (NJP) for disobeying a lawful order and two specifications of disrespect to a petty officer. On 11 March 1982, you received NJP for assault on a petty officer and disrespect toward a petty officer. On 4 May 1982 and 6 May 1982, you received NJP for two specifications of possession of marijuana. On 23 June 1982, you were formerly counseled on being retained in the Navy and warned that any further misconduct may result in administrative separation. On 26 May 1983, you received NJP for failure to obey a lawful order from a chief petty officer, disrespect toward a chief petty officer, disobeying a lawful order from a Military Police in the

performance of his duties, disobeying a lawful order from a commissioned officer, and disrespect toward a commissioned officer. Consequently, you were notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct. In the meantime, on 29 July 1983, a summary court-martial (SCM) convicted you of two specifications of unauthorized absence (UA) totaling three days and wrongful use of marijuana. On 9 August 1983, a Substance Abuse Report noted that you had no potential for further military service. After you elected to waive your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to a pattern of misconduct with an Other Than Honorable (OTH) characterization of service. On 29 August 1983, you commenced a period of UA that lasted 10 days. Ultimately, the SA approved the CO's recommendation, and on 21 September 1983, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. On 27 February 1984, the NDRB denied your request after determining that your discharge was proper as issued.

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 and contention that you were suffering from mental health concerns, which resulted in inpatient treatment for substance use disorder during military service. You further contend that your PTSD and mental health condition resulted from the loss of your father, you used marijuana and alcohol to cope with your condition, you were never written up by superiors, you received commendations and praise from your command, and you were diagnosed with a learning disorder after your discharge. 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's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 27 August 2024. The mental health professional stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, although there is behavioral evidence of a possible substance use disorder. Substance use is incompatible with military readiness and discipline and does not remove responsibility for behavior. The Petitioner has provided no medical evidence in support of his claims. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. 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 insufficient evidence of a diagnosis of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJPs and SCM, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved drug related 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 also concurred with AO that there is insufficient evidence to attribute your misconduct to PTSD or a mental health condition. As pointed out in the AO, there is no evidence that you were diagnosed with a mental health condition in military service and, although there is behavioral evidence of a possible substance use disorder, substance use is incompatible with military readiness and discipline and does not remove responsibility for behavior. Additionally, you provided no medical evidence in support of your claims. Further, the Board observed you were given multiple opportunities to correct your conduct deficiencies and chose to continue to commit misconduct, which led to your OTH discharge. Finally, the Board noted that there is no evidence in your record, and you submitted none, to support your contentions.

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,

12/12/2024

