



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

██████████
Docket No. 5160-24
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.

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 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 to 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). The Board also considered the advisory opinion (AO) of a qualified mental health provider and your response to the AO.

You previously applied to this Board for a discharge upgrade and your request was denied on 22 June 2023. The summary of your active duty service in the Navy remains substantially unchanged from that addressed in the Board's previous decision.

In your previous request, you contended that you had been an outstanding seaman recruit and had deserved a second chance. Although you did not submit mental health evidence for consideration, you described that you had been traumatized by your treatment during interrogation following your positive urinalysis test, which you claimed has adversely affected you in the decades since your discharge. After carefully considering your request, the Board

concluded it lacked sufficient information to find any injustice or error in your uncharacterized discharge or from not issuing you a discharge record, given that you served less than 90 days of active duty for training. Further, the Board found that the potentially mitigating factor of feeling traumatized by not being given a second chance was insufficient to outweigh your misconduct evidenced by your documented wrongful use of controlled substances.

Reviewing your request for reconsideration, 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 and your supplemental contention that it is grossly unfair that you are denied veterans' and other healthcare benefits due to the scars you carry from the purported injustice of your discharge. For the purpose of clemency and equity consideration, you submitted a doctor's certification of your psychological diagnosis.

Because you contend in primary part that post-traumatic stress disorder (PTSD) should mitigate the circumstances your entry-level discharge, the Board also considered the AO, which noted that you submitted evidence of a temporally remote trauma-related mental health diagnosis by a civilian provider that has been attributed to stress incurred during military service. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. There is no evidence of a diagnosis of PTSD. Temporally remote to his military service, he has received a trauma-related mental health diagnosis by a civilian provider that has been attributed to stress incurred during military service. Unfortunately, available records do not establish a nexus with his misconduct, as he denies having engaged in the substance use and claims that his mental health concerns onset due to the way in which his command executed follow-up to his positive urinalysis result.

The AO concluded, "it is my clinical opinion there is post-service evidence from a civilian provider of a mental health condition that may be attributed to military service. There is insufficient evidence of a diagnosis of PTSD. There is insufficient evidence attribute his misconduct to PTSD or another mental health condition.

After reviewing your rebuttal evidence, the AO remained unchanged.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your assigned uncharacterized entry-level separation remains appropriate. The Board concurred with the clinical opinion that there is post-service evidence from a civilian provider a mental health diagnosis that may be attributed to military service but insufficient evidence of a diagnosis of PTSD. Additionally, the Board found insufficient evidence exists to attribute your misconduct to PTSD or another mental health condition, primarily given that your wrongful drug use and positive urinalysis occurred prior in time to your contended traumatic experience and you deny using drugs. Therefore, the Board concluded that your discharge was properly issued in light of your positive urinalysis upon your entry into recruit training. Finally, 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.

As a result, 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. 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,

11/19/2024

