



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

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Docket No. 5435-24
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.

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 1 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 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 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. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the Marine Corps and began a period of active duty on 14 April 1992. On 9 September 1992, you were issued administrative counseling regarding the loss of your military identification card. Following a suicide attempt during which you took approximately 15 prescription pills at once, you received a mental health evaluation on 7 December 1992 which reported that you had no evidence of an emotional or mental disorder of psychiatric significance. However, the evaluation determined you possessed a personality disorder due to limited coping skills. The report advised that you found remaining on active duty intolerable and were likely to

continue suicide attempts. On 10 December 1992, you were subject to nonjudicial punishment (NJP) for violations of Article 112a and Article 115 of the Uniform Code of Military Justice for wrongfully taking a controlled substance in violation of your prescription order and for intentionally injuring yourself by means of an overdose for the purpose of avoiding duty. Consequently, you were notified of processing for administrative separation for the reasons of convenience of the government due to your personality disorder and for misconduct due to drug abuse. You elected to waive your right to a hearing before an administrative separation board. Your separation was approved for both reasons but with a primary basis of misconduct due to drug abuse and an Other Than Honorable (OTH) characterization of service. You were so discharged on 23 December 1992.

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 change your narrative reason for separation to “Secretarial Authority.” You contend that your suicide attempt and resulting drug abuse were due to a mental health condition. You believe that your command made a material error of discretion in not separating you for mental health concerns prior to your suicide attempt and assert that you would not have attempted suicide if your separation had not been delayed. You also believe that you are improperly stigmatized by your discharge characterization in light of your post-discharge behavior and accomplishments. For purposes of clemency and equity consideration, you submitted a personal statement and two letters of support describing that you have obtained a degree, are a licensed contractor, and own a plumbing business.

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

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated during two inpatient hospitalizations. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinicians. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service, since they are not typically amenable to treatment within the operational requirements of Naval Service. Unfortunately, he has provided no medical evidence to support his claims of another mental health condition. His in-service misconduct appears to be consistent with his diagnosed personality disorder, rather than evidence of another mental health condition incurred in or exacerbated by military 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 AO concluded, “it is my clinical opinion that 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 the circumstances of his separation from service to a mental health condition, other than personality 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 found that your conduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the clinical opinion that there is insufficient evidence of a diagnosis of a mental health condition that may be attributed to military service and insufficient evidence to attribute the circumstances of your separation from service to a mental health condition, other than personality disorder. As explained in the AO, your misconduct appears to be consistent with your diagnosed personality disorder, rather than evidence of another mental health condition incurred in or exacerbated by military service. 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. Additionally, the Board observed that your drug abuse was specifically characterized as having been an intentional self-injury for the purpose of avoiding military service.

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 and commends you for your post-discharge good character, 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,

11/29/2024

