



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

██████████
Docket No. 5485-24
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 6 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, 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.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the U.S. Navy and began a period of active duty on 4 March 1980. Upon entry onto active duty, you were granted a waiver for illegal use of a controlled substance while in the Delayed Entry Program. During your first enlistment, the Commanding Officer (CO) sent a report of drug disposition recommendation to the Chief of Naval Personnel (CNP) on 12 February 1981. You admitted that you used, Cocaine five times a year from January 1978 to January 1981 ashore, Hashish three times a month from January 1979 to January 1981 ashore, Marijuana five to eight times a day from September 1975 to January 1981 onboard and ashore, Psilocybin (mushrooms) three times a month from July 1979 to January 1981 ashore and Quaaludes seven times a month from February 1978 to December 1980 onboard and ashore. You were recommended for local counseling and found mildly psych dependent. On 11 March 1981, you received non-judicial punishment (NJP), for wrongful use of marijuana. You were subsequently issued a counseling warning that further drug abuse would result in processing for discharge under Other than Honorable (OTH). You subsequently completed this enlistment with an Honorable characterization of service on 27 October 1982, and immediately reenlisted.

On 20 March 1983, your urinalysis came back positive for marijuana. On 7 May 1983, you were placed on the urinalysis screening program. You then had two more positive urinalysis for marijuana. On 17 May 1983, you received NJP, for wrongful use of marijuana.

Consequently, you were processed for administrative separation due to drug abuse. After waiving your rights, your commanding officer (CO) recommended you be discharged with an Other Than Honorable (OTH) characterization of service. He commented that, "SNM is an above average performer in his rating but is undermining morale onboard this command by his continued abuse of marijuana." The separation authority accepted the recommendation and you were so discharged on 27 May 1983.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for relief. The NDRB denied your request, on 5 December 1983, after determining 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 for a discharge upgrade and contentions that you did not fully comprehend the severity of the discharge decision at age 21, you have been denied veterans benefits, you acknowledge that you had three positive tests for marijuana during your enlistment periods, it is judgmental, harsh, and discriminatory for a CO to say that "you were incorrigible at the age of 21," and it is unjust that he decides you are not entitled to compensation in the future based on three positive urine tests. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

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 19 September 2024. The Ph.D. 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. He has provided no medical evidence in support of his claims. Unfortunately, his available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with 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 that 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."

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 NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included multiple 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 also 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 and determined there is insufficient evidence to attribute his misconduct to PTSD or another mental health condition. As explained in the AO, your available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct, particularly given pre-service substance use that appears to have continued in 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.

Furthermore, the Board noted you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your discharge. The Board was not persuaded by your arguments of unfair treatment and determined it was well within your CO's discretion to process you for administrative separation after your multiple drug offenses. The Board also found the CO's actions were reasonable in light of the fact you were allowed to reenlist after your admission that you routinely abused multiple controlled substances during your first enlistment. 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, 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.

The Board observed that you may be eligible for Department of Veterans Affairs (VA) benefits based on your first period of Honorable service. They recommend you contact the nearest VA office to determine whether you qualify.

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,

11/24/2024

