



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. 5787-24
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 25 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, 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 the advisory opinion (AO) furnished by 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 Navy and commenced active duty on 8 June 1998. On 24 February 1999, you commenced a period of unauthorized absence (UA) that ended on 2 March 1999. On 16 March 1999, you commenced a period of UA that ended on 18 March 1999. On 26 March 1999, you commenced a period of UA that ended on 7 April 1999. On 3 June 1999, you received non-judicial punishment (NJP) for three specifications of failure to go to your appointed place of duty on 29 April, 7 May, and 13 May 1999.

On 3 August 1999, you pleaded guilty at Special Court Martial (SPCM) to three specifications of UA and three specifications of wrongful use, possession, etc. of a controlled substance. You were sentenced to reduction in rank to E-1, confinement, and a Bad Conduct Discharge (BCD). Subsequently, the findings and sentence in your SPCM were affirmed and you were issued a BCD on 22 October 2001.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 21 November 2013, based on their determination 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 change your discharge characterization of service and your contentions that you discovered in 2013 that you suffer from Bipolar Disorder and anxiety that existed prior to service, those conditions impacted your in-service conduct, and you have become stable on medication and completed a drug rehabilitation. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application including your statement, a court order for treatment, a Christian training program certificate, and a hospital discharge summary.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 11 October 2024. The AO stated in pertinent part:

Petitioner contends he incurred mental health concerns during military service, which might have mitigated his discharge characterization of service.

The Petitioner submitted post-service medical record from █ whereby it appears as though he involuntarily was psychiatrically admitted for "Depressive Disorder Not Otherwise Specified," in January 2013. There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any symptoms of a mental health condition. He submitted evidence of a post-service diagnosis of Depressive Disorder, however the rationale/history for the given diagnosis was not provided. His statement is not sufficiently detailed to provide a nexus with his misconduct.

The AO concluded, "it is my considered clinical opinion there is sufficient evidence of a post-service mental health condition. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a 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

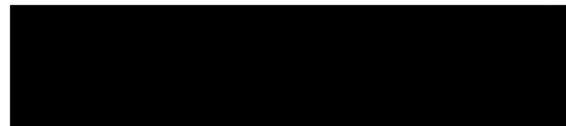
their fellow service members. The Board also considered the likely negative impact your repeated misconduct had on the good order and discipline of your command. Finally, the Board concurred with the AO and determined that, while there is sufficient evidence of a post-service mental health condition, there is insufficient evidence that your misconduct could be attributed to a mental health condition. As explained in the AO, there is no evidence you were diagnosed with a mental health condition while in military service, or that you exhibited any symptoms of a mental health condition. 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.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. 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.

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,

12/19/2024



Executive Director

Signed by: 