



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

█
Docket No. 8221-24
Ref: Signature Date

█
█
█

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 your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 13 September 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 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 determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Navy with an acknowledged history of pre-service drug use and began a period of active duty on 26 July 1990. After absencing yourself without authority from 7 December 1990 through 17 December of 1990, you were subject to nonjudicial punishment (NJP) for your violation of Article 86 of the Uniform Code of Military Justice (UCMJ). You were subsequently administrative counseled to advise you of derogatory trait marks in the enlisted performance evaluation you received following this incident. Your second NJP, in April 1991, was also for an unauthorized absence of one day.

In October 1991, you were issued administrative counseling advising you that you had been identified as an alcohol abuser and would be required to attend a support group and meet with an aftercare coordinator. Within three weeks of this counseling entry, you incurred a third NJP for multiple violations of the UCMJ, to include: Article 134, for disorderly conduct, two specifications under Article 90 for disobeying a lawful order from a superior commissioned officer, Article 89, for disrespect to a superior commissioned officer, and three specifications for disrespectful language toward a noncommissioned officer and superior petty officer. You were not, however, notified of processing for administrative separation until after your fourth and final NJP, on 31 January 1992, for a violation of Article 112 due to wrongful use of the controlled substance, cocaine.

Consequently, you were notified and acknowledged that you were being processed for administrative separation for the reasons of misconduct due to drug abuse, commission of a serious offense, and pattern of misconduct, with a recommendation for your discharge under Other Than Honorable (OTH) conditions. You elected not to consult legal counsel and waived your right to a hearing before an administrative separation board. Ultimately, you were discharged under OTH conditions, on 20 February 1992, for the narrative reason of “Misconduct – Drug Abuse” and a separation code of “HKK.”

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 Memo. These included, but were not limited to, your desire to upgrade your discharge and contentions that you have mental health issues and other health issues, are homeless, and need veterans’ benefits to see a doctor. Additionally, the Board observed that you checked the “PTSD” and “Other Mental Health” boxes on your application but chose not to provide any supporting medical evidence of your claim. For purposes of clemency and equity consideration, the Board noted you included a medical record of your other health diagnoses.

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 the fact it included 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. Further, the Board found that your conduct showed a complete disregard for military authority and regulations. Additionally, the Board noted that you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct. 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 Wilkie Memo and reviewing the record 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.

To the extent that you believe you may have incurred a mental health condition during your military service, and in light of recent changes in law and policy, the Board believes that you may be eligible for mental health care through the Department of Veterans Affairs (VA) regardless of your characterization of service. However, it is solely within the authority of the VA to make such determinations, and the Board recommends that you contact your nearest VA treatment facility to determine your potential eligibility of mental health services.

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,

10/10/2024

