



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: 5698-20

Ref: Signature Date



Dear █

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 the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 limitations was waived in accordance with the 25 August 2017 guidance from the Under Secretary of Defense for Personnel and Readiness regarding requests by Veterans for modification of their discharge due to mental health conditions, sexual assault, or sexual harassment (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 3 May 2021. 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, and applicable statutes, regulations, and policies, including 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 requested and reviewed a 15 March 2021 advisory opinion (AO) from a mental health professional.

You enlisted in the Marine Corps on 23 July 1991. In March 1994, you completed treatment for alcohol abuse. On 29 April 1994, you were counseled concerning substandard conduct in the areas of personal finance, and two separate legal matters relating to your involvement with civilian law enforcement and military police. On 29 June 1994, you received nonjudicial punishment for insubordinate conduct, wrongfully wearing an earring, adultery, and for failing to

maintain sufficient funds in your bank account. You were arrested for driving under the influence of alcohol on 2 June 1994, and on 3 July 1994, your driver's license was revoked. On 6 December 1994, you received nonjudicial punishment for using marijuana. On 9 December 1994, you submitted a written statement that you were innocent of the charge of using marijuana, because you innocently ingested it by inadvertently consuming a brownie that contained marijuana while at a party. On 23 December 1994, you were notified of the initiation of administrative processing, and your rights in connection therewith. You waived your right to an administrative discharge board. On the same day, your commanding officer transmitted to the separation authority his recommendation that you be discharged with an other than honorable characterization of service. On 15 February 1995, you were discharged with an other than honorable characterization of service. In 2017, you filed a petition with this Board seeking an upgrade to your discharge, and you contended that you were provided marijuana by your sergeant and that you have no post-service criminal record. On 7 March 2019, this Board denied your petition.

The Board carefully considered all potentially mitigating factors in your current petition to determine whether the interests of justice warrant relief in your case including in accordance with the Wilkie Memo. You contend in your petition that you firmly believe you were unjustly discharged due to behavior connected with previously undiagnosed and undocumented PTSD and mental health conditions.

In light of your assertion of a mental health condition, the Board received, and reviewed, the 15 March 2021 AO. Your naval records as well as all of the materials you submitted, including the PTSD questionnaire from the Department of Veterans' Affairs, were reviewed. The AO concluded that you did meet the criteria for PTSD. According to the AO, the initial traumatic event was a tornado that occurred when you were a child, which were exacerbated by Hurricane Iniki, and that some, but not all, of your misconduct behaviors are consistent with PTSD, such as your unauthorized absence, substance abuse, and disrespect. The AO also found that some of your misconduct is less likely to be attributable to your PTSD, such as your adultery, violating uniform regulations, and passing bad checks.

After careful review of the AO, the Board did not agree that your mental health condition rose to the level of mitigating your misconduct such that it supports changing your discharge characterization. In addition to your materials concerning your assertion relating to your mental health, the Board also considered the letters of support that you provided. However, after careful review of those, your entire submission, and your naval record, which included nonjudicial punishment on two occasions, including for use of an illegal drug, 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 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, _____

5/11/2021

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Executive Director

Signed by █