



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

Docket No: 7605-20

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 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 19 July 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 reviewed an 18 May 2021 advisory opinion (AO) from a mental health professional, a copy of which you received and to which you did not provide a response.

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 Marine Corps and commenced a period of active duty on 12 September 1983. On 14 October 1983, you received nonjudicial punishment for willfully disobeying an order. On 13 March 1984, you were issued a written warning concerning multiple conduct and performance deficiencies. On 3 May 1984, you received nonjudicial punishment for failing to go to your appointed place of duty. On 23 May 1984, you received nonjudicial punishment for disobeying an order. On 24 July 1984, you received nonjudicial punishment for breaking restriction. On 8 August 1984, you received nonjudicial punishment for failing to sign in for restricted muster and for consuming alcohol in a restricted status. On 8 August 1984, your commanding officer recommended to the discharge authority that you be discharged with an other than honorable characterization of service. In his letter to the discharge authority, your commanding officer certified that you were advised in writing of the specific and general basis for the recommended action. On 14 August 1984, while you were awaiting discharge, you received nonjudicial punishment for using marijuana. On 14 September 1984, a military lawyer for the Marine Corps determined that your discharge materials were sufficient in law and fact. On 18 September 1984, the discharge authority directed that you be discharged with an other than honorable characterization of service and on 28 September 1984 you were so discharged.

The Board carefully considered all potentially mitigating factors in your 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 suffered mental health problems, which led to you drinking and infrequent drug use. You explained that after you addressed these issues you have been successful in changing your life, and you now work as a computer technician.

In light of your assertion of a mental health condition, the Board received, and reviewed, the 18 May 2021 AO. The AO explained,

Although Petitioner contended he suffered from a mental health condition, he did not provide a description of his symptoms or indicate how they interfered with his ability to function. There was no evidence presented that indicated Petitioner's experience of life stressors was extraordinary or unique or that Petitioner met the diagnostic criteria for a mental health condition during his military service. The only mental health condition found in his service and post-discharge medical records was his Alcohol and Cocaine Use Disorder which existed prior to his enlistment (and included inpatient substance abuse treatment), which was not disclosed as part of his enlistment medical history.

The AO concluded, "it is my considered medical opinion the preponderance of objective evidence failed to establish Petitioner was diagnosed with a mental health condition, suffered from a mental health condition at the time of his military service (other than his preservice substance use disorder), or his in-service misconduct could be mitigated by a mental health condition."

In review of all of your materials, the Board did not find an injustice in your record warranting relief. The Board concurred with the finding of the AO. The Board commended you for your successful career in computing technology, but it noted that you did not provide information sufficient for the Board to meet the clemency factors as set forth in the Wilkie Memo. Given the

totality of the circumstances, as well as a review of your overall service record, which included the imposition of nonjudicial punishment on three occasions, 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,

7/21/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]