



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: 8426-20
Ref: Signature Date

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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 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 12 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, 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) (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 the advisory opinion (AO) furnished by a qualified mental health professional dated 2 May 2021, which was previously provided to you.

You enlisted in the Navy and began a period of active duty on 7 Jun 1994. On 15 September 1997, you were convicted by a general court-martial (GCM) of six specifications of wrongful use and possession of a controlled substance. You were sentenced to a forfeiture of pay, confinement, and a reduction in paygrade. On 10 October 1997, you were notified of administrative discharge action by reason of misconduct due to drug abuse, and misconduct due to commission of a serious offense. After being afforded your procedural rights, you elected to waive your right to have your case heard before an administrative discharge board. On 11 October 1997, your case was forwarded to the separation authority recommending you receive an other than honorable (OTH) discharge. On 21 October 1997, the separation authority directed

your discharge with an OTH characterization of service due to drug abuse. On 12 December 1997, you were so discharged.

A qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO regarding your assertion that you were suffering from PTSD during your service. The AO noted that based on the limited evidence available, there is evidence you exhibited behaviors associated with a mental health condition during your military service and your misconduct may be mitigated by your mental health condition.

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 assertion that you suffered from undiagnosed PTSD as a result of your occupation as a Damage Control Man.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, notwithstanding the conclusion of the AO, the Board determined that your misconduct, as evidenced by GCM conviction for six specifications of drug use outweighed these mitigating factors. 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,

7/22/2021

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Executive Director

Signed by: █