



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: 8688-20
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 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 28 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). The Board also considered an advisory opinion (AO) from a qualified mental health professional dated 8 May 2021, which was previously provided to you; the documents you submitted in rebuttal; and a subsequent AO dated 4 June 2021.

You entered a period of active duty in the Navy on 14 March 1980. On 21 October 1980 you received nonjudicial punishment (NJP) for possession of marijuana, damage of government property, and drunk and disorderly conduct in violation of Articles 92, 108, and 133, Uniform Code of Military Justice (UCMJ). On 14 January 1981 you were admitted to alcohol rehabilitation and diagnosed with chronic alcoholism. You were disenrolled from the program due to lack of participation. You received a second NJP on 22 January 1981 for use of marijuana, in violation of Article 134, UCMJ. Your third NJP occurred on 23 November 1982 for possession of a smoking device, a hemostat, and a plastic bag, all containing positive trace amounts of marijuana in violation of Article 134, UCMJ. Your medical record indicates you were charged with driving under the influence on 23 December 1982. You received a fourth NJP on 8 February 1983 for damage of

government property and drunk and disorderly conduct in violation of Articles 108 and 134, UCMJ. Your final NJP occurred on 1 March 1983 for a one day period of unauthorized absence, violation of a lawful order, and possession and use of marijuana in violation of Articles 86, 92, and 134, UCMJ. You were notified of administrative separation processing on 29 April 1983 and the same day you waived your procedural right to counsel; nor did you request an administrative discharge board. On 18 May 1983 you were discharged from the service with an other than honorable characterization of service.

You contend you joined the Navy at the age of 17. You state you were a hospital corpsman and field medic. You further contend that you started drinking at the age of 17, were charged with driving under the influence while in-service, and marijuana was found in your possession. You state the marijuana did not belong to you but you could not prove it belonged to someone else. You contend you did see a couple of things that bothered you that you should have talked about, but kept those experiences inside. You contend you suffer from depression and 37 years have passed (at the time of application). Finally, you note that you still love your country and would still defend it.

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 contentions noted above and your desire to upgrade your discharge. The Board also relied on the AO in making its determination. The AO dated 4 June 2021 noted that the additional information you submitted did not provide new or materially different evidence affecting your application for upgrading your characterization of service. Furthermore, your treatment records did not link your post-service diagnoses to your military service or misconduct. Consequently, the AO concluded that even though you presented evidence of post-discharge diagnoses, the preponderance of available evidence failed to establish your in-service misconduct was mitigated by these mental health conditions. Based upon this review, the Board concluded that these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your five NJPs, 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,

8/6/2021

[REDACTED]

Executive Director

Signed by: [REDACTED]