



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

■
Docket No: 8727-20
Ref: Signature Date

■
■
■

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 limitation 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 25 June 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 12 May 2021 and your rebuttal statement emailed on 13 May 2021.

You began a period of active duty in the Marine Corps on 21 October 2003. On 1 September 2004, you received nonjudicial punishment for wrongful use of marijuana. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to drug abuse. After you waived your procedural rights, your Commanding Officer recommended you be discharged with an other than honorable (OTH) characterization of service due to drug abuse. The discharge authority approved this recommendation and directed discharge with an OTH characterization of service by reason of misconduct. On 19 October 2004, you were discharged.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 12 May 2021. The AO stated that your in-service records do not contain evidence of a diagnosis of a mental health condition or psychological/behavioral changes that may have indicated a mental health condition. Although you contend your misconduct was linked to a mental health condition, the AO stated there was no evidence you exhibited symptoms that would meet the criteria for a mental health condition. Based on the available evidence, the AO concluded that the objective evidence does not establish you were diagnosed with a mental health condition, suffered from a mental health condition at the time of your military service, or that your in-service misconduct could be mitigated by a mental health condition. The AO was provided to you on 12 May 2021, and you responded with a rebuttal statement which was considered by the Board.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contention you were young and made a "momentary mistake" that took away your career but you have now paid for that mistake and "become a man that [your] children look up to." The Board also considered each of the Wilkie Memo factors you contend apply to your situation and make you deserving of an upgrade. Specifically, the Board considered your contention the misconduct was not severe but rather a "relatively minor" drug-related offense that you did on one occasion as an act of "youthful indiscretion." The Board further considered your contention the effects of your OTH discharge have been "life-altering and overall harsh," making it difficult to find employment or further your education, and preventing you from being automatically eligible for veterans benefits. You further contend it has been more than 15 years since your misconduct and, although you are not suggesting the passage of time alone is a mitigating circumstance or argument for a discharge upgrade, the Board should consider the fact you have been "saddled with the stigma" of the OTH for over a decade. Lastly, the Board considered your job history and character references. Unfortunately, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service. The Board, relying on the AO and applying liberal consideration, concluded there was insufficient evidence of an error or injustice that warrants granting clemency in the form of an upgraded characterization of service.

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 your contentions discussed above. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct 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,

7/13/2021

█

Executive Director

Signed by: █