



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

█
Docket No. 1716-21
Ref: Signature Date



Dear █

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 the 25 August 2017 guidance from 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 7 April 2021. The names and votes of the members of the panel 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, applicable statutes, regulations, and policies to include the 2018 Under Secretary of Defense Memo on Guidance to Military Discharge Review Boards and Boards for Correction of Military / Naval Records Regarding Equity, Injustice, or Clemency Determinations (Wilkie Memo).

A review of your record shows that you entered active duty with the Navy in July 1979 with a marijuana waiver. Between April 1980 and July 1981, non-judicial punishment (NJP) was imposed on you three times for multiple incidents of misconduct including possession of marijuana, drunk and disorderly behavior, disrespect, an order violation, and damaging personal property. Around this time, you injured your right foot while running, resulting in your placement on limited duty. The following year, while on limited duty, you tested positive for marijuana use that resulted in the imposition of NJP on 6 May 1982. In the meantime, you were referred for alcohol rehabilitation treatment on 3 June 1982. As a result of your wrongful drug use, you were notified of administrative separation processing for drug abuse and recommended for separation with a General characterization of service. However, you committed further misconduct that resulted in special court-martial conviction on 6 August 1982. This resulted in a

re-notification of administrative separation processing from which you elected an administrative separation board. On 26 October 1982, an administrative separation board found that you committed drug abuse and recommended your discharge with an Other than Honorable (OTH) characterization of service. You were discharged from the Marine Corps on 14 January 1983 with an OTH for drug abuse and an RE-4 reenlistment code.

The Board carefully considered your arguments for an upgrade to an Honorable characterization of service with a RE-1 reenlistment code along with a change to your narrative reason for separation to disability or placement on the disability retirement list. You raised a number of issues including the fairness of your discharge due to Post-Traumatic Stress Disorder (PTSD) and procedural defects. You argue that clemency was not considered prior to discharging you and that your OTH characterization of service no longer serves a useful purpose and prevents you from receiving benefits from the Department of Veterans Affairs (DVA) for service connected disability conditions. Unfortunately, the Board disagreed with your rationale for relief and concluded that your discharge for misconduct and OTH characterization of service was supported by the preponderance of the evidence.

First, despite your arguments that your administrative separation was procedurally defective, the Board found no evidence indicating the Navy's actions were defective. Specifically, the Navy had no obligation to allow you to an opportunity to overcome your drug abuse based on the seriousness of your misconduct. In reviewing your record, the Board determined you were afforded all the required due process prior to your administrative separation from the Navy including an administrative separation board where you were represented by legal counsel and provided an opportunity to contest the Navy's decision that you should be separated with an OTH characterization of service. More importantly, in addition to finding no error, the Board found no injustice with your administrative separation since you were afforded multiple chances after your command chose to retain you after three non-judicial punishments that included a drug possession misconduct. In the Board's opinion, the Navy provided you ample opportunity to reform your conduct before administratively separating you approximately 18 months after your third NJP.

Second, regarding your arguments that the Navy failed to consider clemency, the Board again disagreed. Your record shows you were initially recommended for a General discharged based on your drug abuse despite a record of misconduct that would have supported an OTH discharge. The Board felt this was clear evidence that the Navy offered you a form of clemency at that time. However, your subsequent misconduct and court-martial conviction aggravated your previous misconduct and formed the basis for your OTH discharge.

Third, the Board found no evidence you were diagnosed with PTSD during your time on active duty. Based on the lack of a diagnosis, the Board found no nexus between your misconduct and a mental health condition. As a result, the Board concluded the Department of Defense guidance regarding liberal consideration in mental health related misconduct cases did not apply in your case.

Fourth, the Board considered whether the OTH characterization continues to serve a purpose based on your post-discharge good character. You also raise an argument that your

characterization of service unfairly prevents you from receiving DVA benefits. The Board was not persuaded by these arguments and determined clemency was not supported in your case. In the Board's opinion, performance standards for the issuance of Honorable or General characterizations of service exist for good reason since they ensure these characterizations of service are only issued in cases where service members earn them based on honorable service. Characterizations of service document a service member's performance during a period of enlistment and allow private and government entities to rely on these characterizations in making any number of decisions regarding the servicemember, including hiring decisions or whether veterans benefits should be afforded. Based on your argument, a service member should be allowed to receive an upgrade to their characterization of service based on post-discharge good conduct. In the Board's opinion, this ignores the primary purpose of assigning characterizations of service and is not supportable absent significant evidence of post-discharge character that creates questions of whether an assigned characterization of service creates an injustice. The Board found no such extraordinary evidence to support such a finding in your case. While the Board commends your post-discharge conduct, the Board determined your post-discharge behavior was within the norms of society and was not extraordinary. Along the same vein, the Board did not find your arguments regarding denial of DVA benefits persuasive. DVA benefits are guaranteed to service members who served honorably. Based on your documented history of misconduct that resulted in an OTH discharge, it appears you were appropriately denied VA benefits.

Fifth, based on the Board's determination that you were appropriately discharged with an OTH characterization for misconduct, the Board concluded you are not eligible for a disability discharge or retirement. Even if you were unfit for continued naval service at the time of your discharge, military disability regulations directed misconduct processing to supersede disability processing.

Finally, the Board concluded a change to your reenlistment code to RE-1 was not supported by the preponderance of the evidence. Based on your documented misconduct and the findings of the administrative separation board, the Board agreed that you should not be recommended for further military service. Accordingly, the Board found insufficient evidence of error or injustice to warrant a change to your record.

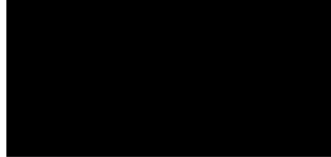
The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge and your contentions discussed above. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief and determined that your misconduct outweighed these mitigating factors. 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.

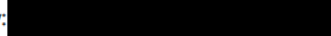
Sincerely,

4/8/2021

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Executive Director

Signed by:

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