



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



Docket No: 1818-21

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 your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 22 October 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), and the relevant Advisory Opinion.

You enlisted in the Marine Corps and began a period of active duty on 5 June 2000. Your fitness report for the period of 1 February 2003 through 9 March 2003 noted that in March 2003, you were apprehended by [REDACTED] Police Department for expired plates and reckless driving. Upon search of the vehicle, 16.8 pounds of cocaine were discovered. The fitness report further noted that you were being held at the [REDACTED] jail for possession with the intent to distribute and failure to affix a drug stamp. On 8 July 2003, you were notified of administrative separation proceedings against you on the basis of commission of a serious offense (illegal possession of cocaine). You acknowledged your rights and elected to appear before an administrative separation board. On 10 June 2004, the Administrative Separation board found by unanimous

vote that you committed misconduct and recommended that you be discharged with an other than honorable characterization of service. On 27 July 2004, you were discharged from the Marine Corps on the basis of misconduct, and received an other than honorable characterization of service and a reentry (RE) code of RE-4B.

In your application for correction you request that your other than honorable discharge be upgraded in part so that you can receive Veterans Affairs (VA) Health Care. You ask that the Board consider your two honorable combat tours in ██████████, your earning a meritorious promotion to corporal, earning the rank of E-5 in 2 years and 6 months, and your 3 years of loyal and honorable service. You submit character letters from Marines with whom you served. These letters state that you suffer from Post Traumatic Stress Disorder (PTSD) and ask that your discharge be upgraded so that you can receive help.

As part of the review process, a Physician Advisor reviewed your request and issued an Advisory Opinion dated 20 September 2021. The Advisory Opinion considered the contention that you are dealing with PTSD and that this diagnosis may mitigate the misconduct that led to your other than honorable discharge. The Advisory Opinion noted that your in-service record revealed per-service marijuana use but did not contain evidence or indication of a diagnosed mental health condition or psychological/behavioral changes. The Advisory Opinion further noted that you did not provide any description of the symptoms which would meet the criteria for a mental health condition or indicate how those symptoms interfered with your ability to function or like any symptoms to your misconduct. The Advisory Opinion concluded that the preponderance of objective evidence failed to establish that you suffered from an unfitting mental health condition at the time of your military service or that your in-service misconduct could be attributed to an unfitting mental health condition. The Advisory Opinion was provided to you, and you were given 30 days in which to submit a response. When you did not provide a response within the 30-day timeframe, your case was submitted to the Board for consideration.

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 the character letters' statements that you suffer from PTSD, your desire to obtain care through the VA, and your positive contributions to the Marine Corps. With regard to your claim of a mitigating mental health condition, the Board reviewed the analysis and determinations of the Advisory Opinion and substantively concurred with its conclusion that the available evidence does not support a finding that you suffered a mental health condition at the time of your military service that mitigated your misconduct. The Board considered your overall trait average of 4.5/4.5 for your enlistment, and noted that you served without an adverse incident from March 2000 until your apprehension in March 2003 by ██████████ ██████████ Police Department. Even in consideration of your success in the Marine Corps prior to March 2003, and noting the information contained in the character letters, the Board found that the severity of the misconduct of illegally possessing 16.8 pounds of cocaine was such that an other than honorable discharge was warranted. The Board concluded that the mitigating factors did not overcome the nature of your misconduct and found that your other than honorable discharge was issued without error or injustice.

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,

11/8/2021

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Executive Director
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