



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: 3479-21

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 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 12 November 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 25 June 1985. On 5 November 1985, you received nonjudicial punishment (NJP) for wrongful use of marijuana. On 5 December 1985, you were notified of administrative separation proceedings on the basis of drug abuse, with a citation to the November 1985 NJP. On 10 December 1985, Commanding Officer, Marine Corps Administrative Detachment, Fort Sill recommended that you be discharged with an other than honorable characterization of service. Your Commanding Officer stated that you had been given every reasonable opportunity to conform to military standards and policies, and that you had been given a moral waiver for pre-service drug use as well as a waiver for fraudulent enlistment for unreported pre-service drug use. On 23 January 1986, you were

discharged from the Marine Corps on the basis of Drug Abuse, and received an other than honorable discharged and a reentry (RE) code of RE-3G.

In your application for correction, you ask that information be taken into consideration in conjunction with your request for a change to your record. You stated that you served in the ██████████ in 1984, and then went to basic training at ██████████. You stated that after you graduated from high school you received an honorable discharge and subsequently enlisted in the Marine Corps. You assert that your stepmother caused family duress but that you went to boot camp where you graduated with honors. After you reported to your first duty station, you state you went drinking with a few other Marines and ended up being hospitalized. You were put on restriction and lost a stripe, which you indicate caused you to suffer from depression. After the alcohol incident, you were befriended by a Marine who offered you a marijuana cigarette; you took one puff which you assert was a “mistake.” You claim that you were given the option of going to court martial or resigning. You received an other than honorable discharge for a single offense, and stated that you have suffered from depression since 1985. You contend that Marine Corps policies have changed since the time of your service and that you likely would not have been discharged under current policies. You ask that family and personal problems and racial discrimination against you by your superiors be taken into consideration. You claim that you used marijuana to self-treat your depression and ask that the policies of the Hagel and Kurta memos be applied to your request.

As part of the review process, a Licensed Clinical Psychologist reviewed your request and issued an Advisory Opinion dated 8 September 2021. The Advisory Opinion noted that your Official Military Personnel File did not contain markers of an unfitting mental health condition nor any psychological symptoms or behavior changes indicative of an unfitting mental health condition. The Advisory Opinion concluded that the preponderance of objective evidence failed to establish that you 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 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 your contention that you were suffering from a mental health condition that mitigated your in-service misconduct. The Board also considered your youth, the nature of your misconduct, and your statements regarding racial discrimination, depression, and your personal struggles. The Board noted that you do not appear to have provided any post-service treatment records or mental health information supporting your claim of suffering from depression. Furthermore, the Board found you did not provide sufficient information to support your claims of discrimination from your chain of command. The Board considered the analysis and conclusions of the Advisory Opinion, and concurred substantively with its determination that the evidence does not establish that you suffered from a mental health condition at the time of your military service that may have mitigated your misconduct. The Board applied the guidance contained in the Wilkie Memo and noted that it would have liked to have had more information

regarding your post-discharge achievements and contributions for clemency consideration. Based on the information in your service record and in consideration of the personal statement you provided with your application, the Board found that the other than honorable discharge was appropriately issued based on your NJP for wrongful use of a controlled substance. However, the Board noted that you may wish to submit amplifying information pertaining to clemency and/or your medical treatment history for purposes of the Board's reconsideration.

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,

12/7/2021

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Executive Director

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