



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: 3777-21
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.

A three-member panel of the Board, sitting in executive session, considered your application on 19 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 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta 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 the advisory opinion (AO) furnished by a qualified mental health provider which was previously provided to you, the documents you submitted in rebuttal, and the subsequent AO.

You enlisted and began a period of active duty in the Marine Corps on 3 March 1991. On 2 March 1992 you were meritoriously promoted to Lance Corporal. On 25 January 1993 you tested positive for marijuana use (THC). You subsequently received a counseling entry in your service record book on 4 February 1993 for wrongful use of THC and frequent involvement with civil and military authorities. On 11 February 1993 you received nonjudicial punishment (NJP) for wrongful marijuana use in violation of Article 112a, Uniform Code of Military Justice. You were notified of administrative separation processing by reason of misconduct due to drug abuse on 5 March 1993. You consulted with counsel on 8 March 1993, and waived an administrative discharge board (ADB). The Staff Judge Advocate found the proceedings to be sufficient in law and fact and you were separated on 19 April 1993 with an other than honorable characterization of service.

You contend that throughout your service you experienced symptoms of bipolar disorder, which mitigate the actions that led to your discharge. You further contend during Christmas break of 1992 you spent time with friends who were smoking marijuana. You state you did not use it yourself but because you were in an unventilated room for significant periods of time with persons who were smoking marijuana, you tested positive upon your return to duty. You further state your quality of service outweighs the discharge and that your post-service accomplishments are deserving of clemency.

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 desire to upgrade your discharge. The Board also relied on the AO in making its determination. The AO noted that there is insufficient evidence that you incurred a mental health condition from military service, and there is insufficient evidence to attribute your misconduct to a mental health condition. Additionally, in its deliberations, the Board considered your reply in rebuttal. In particular, the Board noted that you are not asserting that your mental health conditions resulted from your military service, but that you suffered from mental health conditions during your military service, and you request the Board to consider that as mitigating evidence. Based upon this review, the Board concluded that the potentially mitigating factors in your case were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your counseling entry, NJP, and administrative separation processing, 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,

12/13/2021

[REDACTED]
Executive Director
[REDACTED]