



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: 3827-21
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 22 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 the 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). In addition, the Board considered the advisory opinion (AO) furnished by a qualified mental health professional dated 15 September 2021, which was previously provided to you, and your written rebuttal to the AO.

You enlisted in the Navy and began a period of active duty on 30 October 2002. On 31 August 2005, you received nonjudicial punishment (NJP) for wrongful use of methamphetamine. Additionally, you were notified of administrative discharge action for misconduct due to drug abuse. After being afforded your procedural rights, you elected to waive your right to request that your case be heard before an administrative discharge board. On 6 September 2005, your case was forwarded to the separation authority with the recommendation that you receive an other than honorable (OTH) discharge due to drug abuse. It was stated that your behavior and judgement were totally incompatible with the good order and discipline of the Naval service, you failed to comply with the Navy's zero tolerance drug policy, and had shown that you could not

meet the standards expected of military service. On 28 September 2005, the separation authority directed that you receive an OTH discharge due to drug abuse. On 29 September 2005, you were discharged from the Navy with an OTH characterization of service.

A qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO regarding your assertion that you were suffering a mental health condition during your service. The AO noted that based on the available evidence, the preponderance of available objective evidence failed to establish you suffered from a mental health condition at the time of your military service or your in-service misconduct could be mitigated by a mental health condition. In response to the AO, you provided a written rebuttal and additional documents, which were received by the Board on 13 October 2021, and a follow-up rebuttal dated 3 November 2021. A qualified mental health professional reviewed both rebuttals and provided the Board with an AO noting insufficient evidence to support your contention that you suffered from an undiagnosed mental health condition incurred during your military service, that your misconduct may have been mitigated by a mental health condition, and concurred with the original AO.

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 statement that you were, diagnosed with depressive disorder, insomnia, anxiety and mood lability one year after your separation from the Navy, and that you, and the Navy, were aware of your condition while you were, being discharged from the Navy. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP for wrongful drug use outweighed these mitigating factors. Additionally, the Board concurred with the AO that based on the available evidence, the preponderance of available objective evidence failed to establish you suffered from a mental health condition at the time of your military service or your in-service misconduct could be mitigated by a mental health condition. 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,

12/4/2021

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Executive Director
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