



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: 3828-21
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 you did not file your application in a timely manner, the statute of limitations was waived in accordance with the 25 August 2017 guidance from the Office of 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 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). Additionally, the Board also considered an advisory opinion (AO) furnished by a qualified mental health provider, which was previously provided to you. You were afforded an opportunity to submit an AO rebuttal and you did do so.

You enlisted in the Navy on 22 February 1999. Your pre-enlistment physical examination on 16 December 1998 and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 15 September 2000 you reported for duty on board the █

██████████ in ██████████, ██████████.

Your command notified you that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. Unfortunately, some of the administrative separation (Adsep) documents are not in your record. However, the Board relied on a presumption of regularity to support the official actions of public officers, and given the characterization, narrative reason for separation, and corresponding separation and reentry codes approved by the separation authority in your case, the Board presumed that you were properly processed and discharged from the Navy with an other than honorable (OTH) characterization of service for misconduct due to drug abuse after waiving your right to an Adsep board. Ultimately, on 26 October 2002 you were discharged from the Navy for drug abuse with an OTH characterization and assigned an RE-4 reentry code.

As part of the Board review process, the BCNR Physician Advisor who is a medical doctor and Fellow of the American Psychiatric Association (MD), reviewed your contentions and the available records and issued an AO dated 4 October 2021. The MD initially noted that you did not describe any traumatic events, psychological symptoms and/or behavioral changes supporting a mental health diagnosis, nor did you describe any occupational impairment due to your purported mental health condition, or a nexus between your misconduct and a mental health condition. The MD noted that you provided a March 2021 after visit summary listing a condition of a generalized anxiety disorder with panic attacks and treatment with anti-depressants. However, the MD noted that such summary did not include any clinical history of mental health conditions associated with your military service or active duty misconduct. The MD noted the remainder of your active duty records did not contain any diagnosed mental health conditions, symptoms or behaviors indicative of a mental health condition, nor any nexus between your misconduct and a mental health condition. The MD noted that throughout your disciplinary actions and administrative processing, there were no concerns cited warranting referral to mental health resources. The MD further noted that you did not provide any in-service or post-discharge clinical records in support of your petition. The MD concluded by opining that there was insufficient evidence to establish you experienced a mental health condition on active duty, or that your in-service misconduct could be attributed to an unfitting mental health condition.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to your contentions that: (a) while overseas you were faced with the prospect of divorce which brought you down into a severe depression; (b) when you got back from deployment you found out that your brother was using your driver's license and caused it to be suspended and revoked; (c) post-deployment was a very stressful time and your anxieties and depressions took a personal tone when you found out your wife was divorcing you; (d) it was at that point you messed up and smoked marijuana; (e) you take full responsibility for your actions; (f) you know you did the wrong thing by abusing drugs and it was a selfish action; (g) you know now that there are healthy ways to cope with things and you regret what happened; (h) at the time of your mistake you were in a bad place; and (i) your post-

military accomplishments and reputation have proven to yourself and to others that you are a strong man, and an outstanding citizen, husband and father. However, given the totality of the circumstances, the Board determined that your request does not merit relief.

In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no nexus between any mental health conditions or mental health-related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. The Board determined the record clearly reflected that your misconduct was willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions.

The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. Lastly, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. The Board carefully considered any matters submitted regarding your post-service conduct and accomplishments; however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that given the totality of the circumstances your request does not merit relief. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct clearly merited your receipt of an OTH.

Additionally, despite the fact that some of your Adsep records were not in your service record, the Board relies on a presumption of regularity to support the official actions of public officers. In the absence of substantial evidence to rebut the presumption, to include evidence submitted by the Petitioner, the Board presumes that you were properly processed for separation and discharged from the Navy. In the end, the Board concluded that you received the correct discharge characterization based on your circumstances, and that such OTH characterization was in accordance with all Department of the Navy directives and policy at the time of your discharge.

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,

12/1/2021

[REDACTED]

Executive Director

[REDACTED]