



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: 3965-21

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 Navy and began a period of active duty on 4 December 2000. On 6 December 2002, you received nonjudicial punishment (NJP) for wrongful use of a controlled substance (marijuana), missing ship's movement, and unauthorized absence (UA) from 17-26 November 2002. On 9 December 2002, you were notified of administrative separation proceedings against you on the basis of drug abuse. On 10 December 2002, Commanding Officer, █ recommended that you receive an other than honorable discharge. On 6 January 2003, you were discharged from the Navy on the basis of misconduct, and you received an other than honorable discharge and a reentry (RE) code of RE-4.

In your application for correction, you request an upgrade from an other than honorable to a general characterization of service. You state that you were “very young and dumb,” had just served overseas during Operation Enduring Freedom, and were not in your best mental state. You state that you are now grown with two boys and would like to buy a home for your family. You are a chef, father of two, and are drug and alcohol free. In your application for correction, you note that “PTSD” is an issue in your request.

As part of the review process, a Physician Advisor reviewed your request and issued an Advisory Opinion dated 30 September 2021. The Advisory Opinion noted that your in-service 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. Furthermore, you did not provide an in-service or post-discharge clinical records in support of your petition. The Advisory Opinion concluded that the preponderance of objective evidence failed to establish that you exhibited psychological or behavioral markers indicative of PTSD or other mental health conditions 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 possibility that you were not in the best mental state and your inference of suffering from PTSD. The Board also considered your youth and your participation in Operation Enduring Freedom. The Board reviewed the analysis and conclusions of the Advisory Opinion, and concurred substantively with its determination that the evidence you provided and the information in your record did 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 found that the seriousness of your misconduct of wrongful use of a controlled substance and missing movement supported your other than honorable discharge. Absent additional information pertaining to either matters of clemency or to establish a mental health condition that may have mitigated your misconduct, the Board found that your current discharge was issued without error or injustice and that corrective action is not warranted.

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,

12/10/2021

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Executive Director

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