



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

Docket No: 4021-21
Ref: Signature Date

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.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

A three-member panel of the Board, sitting in executive session, considered your application on 25 October 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 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). In addition, the Board considered the advisory opinion (AO) furnished by a qualified mental health professional dated 31 August 2021, which was previously provided to you, and your response to the AO dated 24 September 2021.

You enlisted in the Navy and began a period of active duty on 5 February 1968. On 15 April 1970, you received nonjudicial punishment (NJP) for failing to obey a writing order not to drink alcoholic beverages onboard ship, misbehavior of a sentinel by leaving your post, and conduct to the prejudice of good order and discipline in the armed forces. On 8 July 1970, you were convicted by summary court-martial (SCM) of 26 days of unauthorized absence, missing ship's movement, and wrongful use of marijuana. On 12 August 1970, you were notified of

administrative discharge action by reason of unfitness. After being advised of your procedural rights, you elected to submit a statement on your own behalf pleading for a General discharge. You admitted you had made a mistake, that the use of drugs was wrong, and that you thought you were caught in a childish experiment that without a doubt had backfired right into your own face. On 19 August 1970, your case was forwarded to the separation authority stating that your association with drugs had gone beyond an initial exploratory stage, you admitted use of LSD intensified the gravity of your involvement, and there were not positive indications that you had been rehabilitated, and noting that you were a detriment to the Navy, a serious risk to any command, and recommended for an undesirable discharge by reason of unfitness. On 11 September 1970, the separation authority directed that you receive a general discharge. On 16 September 1970, you were discharged from the Navy with a general 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 from Post-Traumatic Stress Disorder (PTSD) during your service. The AO noted that based on the available evidence, the preponderance of objective evidence failed to establish you suffered from an unfitting mental health condition at the time of your military service, or your in-service misconduct could be attributed to an unfitting mental health condition.

On 24 September 2021, you submitted a statement in rebuttal to the AO. You stated that you take responsibility and regret any actions leading to your “Under Honorable Conditions” discharge. You believe your PTSD and other undiagnosed conditions contributed to your misconduct, your PTSD was never diagnosed during your time of service and during your admission to the hospital. Additionally, you contend that the treatment you received, which included confinement to a straightjacket, and the administering of thorozone, added to your stress and undiagnosed PTSD, and that being bunked just below 5” guns with constant rounds fired contributed to the onset of PTSD, and for the hospital discharge report to say you were mentally fit for service was a gross injustice. You further stated that the Department of Veterans Affairs (DVA) Psychologist clearly documented and diagnosed you with an Adjustment Disorder, with Mixed Anxiety, Depressed Mood and PTSD, and at the time of your service, you self-medicated by using POT to cope. Additionally, that you live in [REDACTED] where the medical use of Marijuana is legal, you use Cannabis to relieve yourself from your ongoing symptoms, are a viable business owner in your community, owned and ran kitchen design companies for nearly 45 years before retiring, and are 100% disabled by the DVA.

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 assertions set forth above. 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 and SCM conviction, which involved the wrongful use of marijuana, outweighed these mitigating factors. Additionally, the Board concurred with the AO that based on the available evidence, the preponderance of objective evidence failed to establish that you suffered from an unfitting mental health condition at the time of your military service or that your in-service misconduct could be attributed to an unfitting 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,

11/2/2021

Executive Director