



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: 4919-21
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.

A three-member panel of the Board, sitting in executive session, considered your application on 24 January 2022. 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 29 October 2021, which was previously provided to you.

You enlisted in the Marine Corps and began a period of active duty on 11 February 1999. On 6 March 2000, you were counseled concerning being absent from formation. You were warned that failure to take corrective action could result in administrative discharge action. On 6 June 2001, you received nonjudicial punishment (NJP) for three specifications of being absent from your appointed place of duty. On 13 June 2001, you received NJP for wrongful use of marijuana. On 27 June 2001, you were notified of administrative discharge action by reason of misconduct due to drug abuse. After being afforded your procedural rights, your case was forwarded to the separation authority with the recommendation that you receive an other than honorable (OTH) discharge. On 3 July 2001, medical staff reported that you refused a medical officer's evaluation, and that there was no Veterans Administration treatment available if you

were to be administratively separated from active duty. On 6 July 2001, the separation authority directed that you receive an OTH discharge for misconduct due to drug abuse. On 13 July 2001, you were discharged from the Marine Corps 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 from Post-Traumatic Stress Disorder during your service. The AO noted that based on the current available evidence, there is insufficient evidence that you may have incurred a mental health condition during military service, and there is insufficient evidence that your misconduct could be attributed to a 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 Wilkie Memo. These included, but were not limited to, your assertions that: (a) you were suffering from undiagnosed stress and anxiety stemming from a traumatic incident in September 1999, when you witnessed the attempted suicide of a fellow trainee, and you were experiencing gastrointestinal complaints, both of which contributed to your decision to medicate with marijuana and unauthorized absence (UA); (b) you had a period of exemplary duty, until you began to have continuous gastrointestinal illness after being detained to work in burn pits, your stress peaked when you were doing physical training, and your superiors dismissed your distress; and (c) you had no intention of going UA or shirking your duties, but were suffering from two undiagnosed illnesses and felt you had been pushed too far, and you accepted responsibility that you did wrong and only ask for an upgrade in order to gain medical care through the Department of Veterans Affairs.

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 two NJPs, one of which was from drug abuse, and the fact that you were counseled and warned of the consequences of further misconduct outweighed these mitigating factors. The Board also concurred with the AO that based on the current available evidence, there is insufficient evidence that you may have incurred a mental health condition during military service, and there is insufficient evidence that your misconduct could be attributed to 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,

1/28/2022

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Executive Director

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