



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



Docket No: 4928-21
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 16 March 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 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). The Board also considered an advisory opinion (AO) from a qualified mental health professional dated 19 January 2022, which was previously provided to you.

You enlisted in the Navy and began a period of active duty on 9 February 1982. On 16 March 1983, you received non-judicial punishment (NJP) for an unauthorized absence totaling nine days. On 8 August 1984, you received your second NJP for wrongful use of marijuana. On 13 August 1984, you received an administrative remarks (Page 13) counseling concerning deficiencies in your performance and conduct, specifically, your NJP for the wrongful use of a controlled substance. You were advised that any further deficiencies in your performance and or conduct may result in disciplinary action, and in processing for your administrative discharge from the naval service. On 23 October 1984, you provided a urine sample that subsequently tested positive for cannabinoids.

On 20 November 1984, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to drug abuse. You were advised of, and exercised, your procedural right to consult with and to be represented by military counsel, and to present your case to an administrative discharge board (ADB). Prior to the convening of your ADB, on 18 December 1984, you provided a urine sample that subsequently tested positive marijuana. On 4 January 1985, your ADB was convened and determined that the preponderance of the evidence supported a finding of misconduct due to drug abuse and recommended that you be separated from the Navy with an other than honorable (OTH) characterization of service. Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an OTH characterization of service. Prior to the separation authority's decision, on 23 January 1985, you received your third NJP for wrongful use of marijuana, and on 6 February 1985, you received your fourth NJP for absence from your appointed place of duty. Ultimately, the SA approved the recommendation for your administrative discharge and directed your administrative discharge from the Navy with an OTH characterization of service by reason of misconduct due to drug abuse, and on 15 February 1985, you were so discharged.

As part of the Board's review, a qualified mental health professional reviewed your request, and provided the Board with an AO on 19 January 2022. The AO noted there is no evidence that you were diagnosed with a mental health condition during military service. Although, there is behavioral evidence of substance use disorder. Unfortunately, you have not provided any post-service medical evidence in support of your claims. Your statement does not provide sufficient detail to determine a nexus with your misconduct. Additional records are required to render an alternate opinion. The AO concluded by opining that there is insufficient evidence that you may have incurred an unfitting mental health condition during military service. Additionally, there is insufficient evidence that your misconduct could be attributed to an unfitting mental health condition

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contention that it was a "one-time infraction due to severe █." Unfortunately, after careful consideration of the AO and applying liberal consideration, the Board did not find an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service.

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 contention as previously discussed, and your desire to upgrade your discharge character of service. For purposes of clemency consideration, the Board noted you did not provide a statement or supporting documentation describing post-service accomplishments, or advocacy letters. Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined the seriousness of your misconduct as evidenced by your four NJPs, two of which involved the wrongful use of a controlled substance, outweighed these mitigating factors. Additionally, the Board noted there is no precedent within this Board's review, for minimizing the "one-time infraction." As with each case before the Board, the seriousness of a single act must be judged on its own merit; it can neither be excused nor extenuated solely on its isolation.

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,

3/24/2022

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Executive Director

Signed by: █