



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: 5048-21
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 Board waived the statute of limitations 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 7 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 to 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 the advisory opinion (AO) furnished by a qualified mental health provider which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

Prior to enlisting, you were arrested in April of 1997 for possession of marijuana. Although you admitted to per-service drug use twice in March and August of 1997, you expressed having no intent of future use. You began a period of active duty in the Navy on 26 September 1997, and upon entering, had a positive urinalysis for marijuana use. During substance abuse screening, you admitted to having used marijuana in excess of 100 times, to include on 21 September 1997, just days before beginning active duty. On 8 October 1997, you were notified of administrative separation and separated the following day with an entry-level characterization of service for erroneous enlistment based on not having revealed the scope of your pre-service drug use.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warranted relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge and your contentions that your recruiter knew of your history of drug use but pressured you to provide incorrect information and pressured you to enlist, that you felt like a prisoner at basic training and did not feel that you had volunteered for service, and that you were given a drug test after reporting to mental health providers that you were having trouble sleeping. In reviewing your contention of suffering from a mental health condition or disability, and in the absence of a diagnosis rendered by a licensed psychiatrist or psychologist or any other substantiating documents, the Board considered the AO in making its determination. The AO observed that you revealed significant previously undisclosed drug abuse history at your substance abuse screening sufficient for a diagnosis of cannabis abuse. The AO pointed to a lack of any clinical diagnosis or supporting documentation of an existing mental health condition and noted that you did not describe the history or onset of any specific symptoms or behavioral changes.

In its deliberations, the Board concurred with the AO's assessment that your records contained insufficient evidence to establish that you suffered an unfitting mental health condition at the time of your military service or that your entry-level discharge could be mitigated by such condition. With respect to your allegation that you were erroneously enlisted in spite of your recruiter's knowledge of your pre-service drug use, the Board found insufficient evidence to support this contention. To the extent that you contend you felt pressured to enlist, felt like a prisoner at basic training, and did not feel that your enlistment was voluntary, although the Board found no evidence in your record to support these contentions, the Board notes that your entry-level separation released you from any further obligated service. Ultimately, the Board determined that your drug abuse misconduct and failure to reveal the scope of your pre-service drug use outweighed the totality of the evidence you presented and that an entry-level separation was appropriate. Accordingly, even after considering all relevant and available evidence, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon the 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,

1/24/2022

[REDACTED]
Executive Director
[REDACTED]