



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: 5376-21
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 10 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 18 November 2021, which was previously provided to you.

On 18 January 1985, you reenlisted in Navy after serving over eight years of prior honorable service. On 6 May 1986, you received nonjudicial punishment (NJP) for wrongful use of marijuana. Additionally, you were counseled and warned that further misconduct could result in administrative discharge action. On 21 May 1986, a Drug and Alcohol Report stated you showed good potential for further productive military service, and your prognosis for discontinued drug use appeared to be very good. On 8 June 1986, a second Drug and Alcohol Report stated you showed good potential for further productive military service and discontinued drug use. On 30 September 1986, you were issued a Letter of Substandard Performance from the Navy Military Personnel Command stating, in part, that your improvement was mandatory, and failure to so could result in your involuntary separation from the Navy. On 8 July 1987, you were convicted by civil authorities of assault and being drunk in public. On 16 January 1989, you

were discharged and allowed to immediately reenlist after serving over 12 years of prior honorable service. On 24 April 1992, a Navy Drug Lab reported that you had tested positive for cocaine use. On 28 April 1992, you received NJP for wrongful use of cocaine. On 29 April 1992, you submitted an appeal of your NJP on the grounds of it being unjust. On 7 May 1992, an Alcohol/Drug Evaluation recommended that you undergo Level II Rehabilitation Treatment and attend Alcohol Anonymous meetings. On 13 May 1992, you were notified of administrative discharge action for misconduct due to drug abuse. After being advised of your procedural rights, you elected to have your case heard before an administrative discharge board (ADB). On 14 May 1992, your NJP appeal was forwarded to the separation authority recommending disapproval. On 18 May 1992, the separation authority denied your NJP appeal, finding that the punishment was neither unjust nor disproportionate to the offense. On 9 June 1992, a Drug and Alcohol Report stated you still showed good potential for further productive military service and discontinued drug use. On 21 July 1992, the ADB found you had committed misconduct due to drug abuse and recommended that you receive an other than honorable (OTH) discharge. On 27 July 1992, your defense counsel submitted a letter of deficiency to the separation authority via your commanding officer. On 30 July 1992, your case was forwarded to the separation authority with the recommendation that you receive an OTH discharge. On 20 August 1992, the separation authority directed that you receive an OTH discharge due to drug abuse. You were discharged on 4 September 1992, 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 an opioid addiction or mental health condition during your service. The AO noted that based on the current available evidence, there is insufficient evidence that you incurred a mental health condition during military service, and there is insufficient evidence that your misconduct could be mitigated by 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) your discharge was due to the military draw-down of the 1990's, that you recall your superior approaching you with the early out program, but you declined, and the word got out that the Navy was determined to force some of its enlisted personnel out; (b) sometime later, you were directed to provide a urine sample and to your surprise, you tested positive; and (c) you believe this was the way for the Navy to reach its goal during the drawdown, and you have never used illegal drugs. 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 for wrongful drug use, and that fact that you were counseled and warned on more than one occasion of the consequence of further misconduct outweighed these mitigating factors. The Boarded note that you were allowed to reenlist and given the opportunity for retention and to earn a better characterization of service. Additionally, The Board also concurred with the AO that based on the current available evidence, there is insufficient evidence that you incurred a mental health condition during military service, and there is insufficient evidence that your misconduct could be mitigated by 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,

1/21/2022

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Executive Director

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