



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: 5404-21

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 your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 17 December 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 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), and the relevant Advisory Opinion.

You enlisted in the Navy and began a period of active duty on 26 October 1994. On 21 February 1996, you received nonjudicial punishment (NJP) for two specifications of unauthorized absence (UA) and failure to obey a lawful order to submit to a urinalysis. On 9 April 1996, you received a second NJP for wrongful use of a controlled substance (marijuana). On 16 April 1996, you received notice of administrative separation proceedings against you on the basis of drug abuse as evidenced by your 9 April 1996 NJP. You waived your right to appear before an administrative separation board. On 29 April 1996, Commanding Officer, █, recommended that you be administratively separated on the basis of misconduct due to drug

abuse. On 10 June 1996, you were discharged from the Navy on the basis of misconduct and received an other than honorable characterization of service and a reentry (RE) code of RE-4.

In your application for correction, you state that you were diagnosed with schizophrenia and have been deemed permanently disabled but the Social Security Administration. You contend that you were undiagnosed at the time of your military discharge but that you have no doubt that the mental health condition was a contributing factor to your inability to complete your term of service.

As part of the review process, a Licensed Clinical Psychologist reviewed your request and issued an Advisory Opinion dated 10 October 2021. The Advisory Opinion noted that there is no evidence in the service record or post-service records to indicate a mental health diagnosis. Additionally, there is no evidence to support a contention that your misconduct should be attributed to a mental health diagnosis. Based on the current available evidence, the Advisory Opinion concluded that there is insufficient evidence that you incurred a mental health condition during your military service and there is insufficient evidence to attribute your misconduct to a mental health condition. The Advisory Opinion was provided to you, and you were given 30 days in which to submit a response. When you did not provide a response within the 30-day timeframe, your case was submitted to the Board for consideration.

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 that you were suffering from a mental health condition that mitigated your in-service misconduct. The Board noted that you have not provided any in-service or post-service treatment records, mental health information, or other supporting evidence supporting your claim of suffering from schizophrenia while you were in the Navy. The Board acknowledged that you state you have been deemed permanently disabled by the Social Security Administrative, but noted that you did not provide documentations supporting the determination. The Board considered the analysis and conclusions of the Advisory Opinion, and concurred substantively with its determination that the evidence does not establish that you suffered from a mental health condition to include schizophrenia at the time of your military service that may have mitigated your misconduct. Based on the information in your service record the Board found that the other than honorable discharge was appropriately issued based on your NJP for wrongful use of a controlled substance.

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,

12/25/2021

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Executive Director

Signed by: █