



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: 5414-21

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 in the Navy, you were discharged from the U.S. Air Force delayed entry program due to marijuana use. After completing pre-service Drug and Alcohol Abuse Screening, you began a period of active duty in the Navy on 28 December 1984. You received emergency medical treatment on 1 June 1986 for injuries which included multiple blows to your face after reportedly being assaulted by a group of seven or eight unidentified individuals. Your records reflect service aboard the █ during its deployment to the █

██████████ from 12 August 1986 – 6 February 1987. After returning from deployment, you attended a 5-day Alcohol and Drug Safety Action Program along with several other members of your crew, which you completed in 13 March 1987. While in port, you falsified a radar maintenance report, for which you received nonjudicial punishment (NJP) on 8 May 1987 for Article 92, dereliction of duty. Following a unit-wide drug test on 26 May 1987, your results were positive for marijuana use. Another random drug test conducted on 9 June 1987 also resulted in a positive for marijuana, as well as for amphetamine or methamphetamine, and you received a second NJP for two specifications of Article 112a, wrongful use of controlled substances.

After being notified of the initiation of administration separation proceedings, you initially consulted with counsel and requested representation before an administrative separation board; however, you then received medical screening for drug abuse on 1 August 1987, during which you reported almost continuous use of marijuana “since enlistment.” During follow-on screening by the Counseling and Assistance Center (CAAC) on 14 August 1987, you disclosed that you had “been using marijuana almost daily since age 16.” As a result, CAAC assessed that you needed level III rehabilitation for psychological dependence. Prior to any administrative board convening, you received two additional NJPs for Article 112a, for further instances of wrongful use of controlled substances on 3 August 1987 and 18 August 1987. Subsequently, your command sent several messages to Naval Personnel Command (PERSCOM) to confirm that you waived your right to an administrative hearing and to make a statement. One of these messages provided a report of drug dependency that referenced only the medical officer’s evaluation of 1 August 1987, which diagnosed that you did not have physical or psychological drug dependence, and not the later CAAC assessment of psychological dependency; however, your record indicates that, prior to your separation, you were offered the opportunity to attend level III rehabilitation and declined, and you were discharged on 19 November 1987 with an other than honorable characterization of service due to drug abuse misconduct.

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: (a) it was unjust because you suffered multiple traumatic experiences during your deployment which, along with excessive work-related stress, caused you to develop PTSD, which mitigates your self-medicating drug abuse misconduct; and (b) that your command knowingly misled PERSCOM in responding to your drug dependency status. In reviewing your contention of suffering from a mental health condition or disability, the Board reviewed the clinical records submitted in support of your contention and also considered the AO in making its determination. The AO first noted that the clinical record from Dr. ██████████ is in response to your specific complaints of depression and PTSD, from which the doctor made an initial assessment that there was sufficient reason to refer you for psychiatric care and testing. In addressing the clinical reports of testing conducted by Dr. ██████████ as well as his letter assessing your mental health condition, the AO accounted for the fact that Dr. ██████████ states your “trauma related disorder” is a mental health (MH) disorder characterized by many of the symptoms of PTSD. However, the AO also observed that, during your in-service drug abuse screenings, you reported drug use “almost daily” since the age of 16, which you indicated had continued upon enlisting. Based on your reported use, the AO opined that, although you have a diagnosed trauma-related disorder, the drug abuse misconduct for which you were separated reasonably resulted from continued, routine

use of illegal drugs and, because you only provided only select portions of your VA clinical records, the available evidence is insufficient to establish the onset and development of your MH condition or to determine whether a nexus to your misconduct which might excuse or mitigate your discharge.

In its deliberations, the Board concurred with the AO's assessment that, although there is evidence you developed a MH condition from your military service, there is insufficient evidence to attribute your in-service misconduct to that condition. Further, the Board concurred with the AO that your explanation for falsifying a maintenance record admits that you did so intentionally, as a result of not being able to perform the required checks at the time. The Board notes that, under the Kurta guidance, misconduct of a premeditated nature would not normally be mitigated by MH conditions. Finally, with regard to your contention that your command improperly reported only the dependency status from the medical officer's evaluation without including the CAAC assessment of your psychological dependency, you were afforded the opportunity for level III residential substance abuse rehabilitation prior to your separation, but declined. Therefore, the Board found no material error or injustice affecting your discharge under on that contention. As a result, the Board determined that your misconduct, evidenced by four NJPs, outweighed the mitigating evidence you presented. 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,

1/25/2022

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Executive Director

Signed by █