



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: 5620-21

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552, 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, sitting in executive session, considered your application on 14 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, applicable statutes, regulations, and policies, to include 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 determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Navy and began a period of active duty on 30 December 1996. You earned a Good Conduct Medal for that period of service through 29 December 1999, which is reflected in your Certificate of Release or Discharge from Active Duty (DD Form 214). On 9 February 2000 however, you received nonjudicial punishment (NJP) for wrongful use of a controlled substance which resulted in your administrative separation with an other than honorable characterization of service based on misconduct due to wrongful drug use on 5 April 2000.

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 desire to upgrade your discharge, your contentions that you suffered from a mental health condition and post-traumatic stress disorder (PTSD), your remorse for making mistake, and your belief that your service records reflect that you otherwise served honorably. In the absence of any clinical or diagnostic evidence in support of your post-service medical conditions, the Board relied on the AO during its deliberations. The AO observed that your application specifies that your use of a controlled substance was “a mistake.” The AO noted that you did not provide any clarifying information about the trauma related to your PTSD or mental health issues, such as when it occurred or what symptoms you experienced and, without that information, the AO was unable to establish the onset and development of mental health symptoms or identify a nexus with your misconduct.

The Board concurred with the AO in its opinion that the preponderance of available, objective evidence failed to establish that you suffered from PTSD or another mental health condition at the time of your military service and, therefore, failed to establish that such condition might have mitigated your in-service misconduct. Based upon this review, the Board concluded that the potentially mitigating factors which you contended were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP for wrongful use of a controlled substance, outweighed the modicum of mitigating evidence you presented. Accordingly, 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,

1/31/2022

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Executive Director

Signed by: █