



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

██████████
Docket No: 5813-21
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 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 statute of limitations was waived 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 28 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 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health provider which was previously provided to you.

You enlisted and began a period of active duty in the Navy on 26 July 1994. On 7 February 1995 you entered into a period of unauthorized absence (UA) until your return on 4 September 1996. On 27 September 1996 you received nonjudicial punishment (NJP) for wrongful marijuana use in violation of Article 112a, Uniform Code of Military Justice. On 2 October 1996 you were notified of administrative separation processing by reason of misconduct due to commission of a serious offense as evidenced by all incidents of misconduct during your current enlistment for which a punitive discharge could have been awarded, and misconduct due to drug abuse. You waived your procedural rights, declined Level III in-patient alcohol and drug rehabilitation treatment, and were discharged with an other than honorable characterization of service on 25 October 1996.

You contend you were a traumatized 18 year old when you made the mistake of experimenting with cannabis, you were wrong, and would change the mistake if you could. You state you have learned since then that you suffer from anxiety and depression from when you were a child. You further state you now have a son considering military service and it would be great motivation if your characterization of service were upgraded, you have been an exemplary citizen and a hardworking father, and have not used cannabis in any recreational form in over 20 years.

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 contentions noted above and desire to upgrade your discharge. The Board also relied on the AO in making its determination. The AO noted that your service record did not contain evidence of a diagnosis of a mental health condition or reported psychological symptoms/behavioral changes indicative of a diagnosable unfitting mental health condition. Furthermore, the lack of clarifying information made available did not provide enough markers to establish an onset and development of mental health symptoms or identify a nexus with your misconduct. Consequently, the AO concluded the preponderance of available objective evidence failed to establish you suffered from a mental health condition at the time of your military service or your in-service misconduct could be mitigated by a mental health condition. Based upon this review, the Board concluded that the potentially mitigating factors in your case were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and administrative separation processing, outweighed these mitigating factors. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief. Furthermore, the Board noted you did not provide any post-service documentation or advocacy letters in support of your request for an upgraded characterization of service. Additionally, whether or not an individual is entitled to veterans' benefits is a matter under the cognizance of the VA. You may contact the nearest office of the VA concerning your right to apply for benefits. If benefits have been denied, you may be able to appeal the denial under procedures established by the VA.

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,

2/8/2022

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Executive Director
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