



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: 6009-21
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 7 February 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, and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). Additionally, the Board also considered the advisory opinion (AO) furnished by 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.

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 U.S. Marine Corps (USMC) and began a period of active duty on 27 September 1979. Subsequent to this, you received drug and alcohol abuse orientation. On 13 October 1981, you received your first nonjudicial punishment (NJP) for disobeying a lawful order by possessing marijuana. Although you appealed this NJP, on 17 December 1981, your

appeal was denied. On 24 November 1982, you completed six (6) hours of battalion level drug and alcohol classes and were found to have potential for further service. On 27 December 1982, you received a second NJP for wrongfully using marijuana. You were counseled on your repeated pattern of disciplinary infractions against the articles of the uniform code of military justice and your substandard performance, unprofessional attitude, complete lack of discipline, and for testing positive for marijuana on two separate urinalyses. You were advised that further misconduct could result in you being processed for administrative discharge. On 13 January 1983, you received a third NJP for wrongfully using both cocaine and marijuana. On 27 January 1983, you were informed of your Commanding Officer's (CO) intent to recommend to the discharge authority that you be separated with an other than honorable (OTH) characterization of service for drug abuse. You were provided your procedural rights, electing to obtain copies of all documents to be forwarded to the discharge authority and waiving all other procedural rights. On 2 February 1983, a staff judge advocate reviewed your case and found the proceedings to be sufficient in law and fact. On 9 February 1983, the discharge authority directed you be discharged with an OTH characterization for drug abuse, and on 22 February 1983, you were so discharged. On 29 July 1987, you petitioned the naval discharge review board (NDRB) for an upgrade of your discharge to honorable and back pay contending your discharge was unjust due to inaccurate urinalysis tests. NRDB denied your request.

As part of the Board's review, 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 never given the opportunity to address your drug addiction/abuse and were told at court-martial that there was no room in the Marine Corps for someone who abused drugs. The AO noted there was no in-service or post-service documentation of a diagnosis of a mental health condition. As such, the AO opined, based on the current available evidence, there is insufficient evidence that you incurred an unfitting mental health condition during your military service, and there is insufficient evidence that your misconduct could be attributed to an unfitting 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 desire to upgrade your discharge and your contentions noted above. The Board viewed your allegations with serious concern. However, this Board is not an investigating agency nor does it have the resources to investigate unsubstantiated allegations. In addition to considering your DD 214 and Bachelor's Degree, the Board noted you did not submit character letters to be considered for clemency purposes. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct outweighed these mitigating factors. Lastly, the Board concurred with the AO. 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 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,

2/22/2022

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Executive Director

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