



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: 6200-21

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 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 24 April 1996. On 7 October 1996, the Chief of Naval Personnel notified your chain of command that you failed to disclose your full arrest record on your SF 86 submitted on 27 February 1996 and the DD 1966 dated 24 April 1996, to include that you did not disclose that you had been arrested on 27 October 1994, for receiving stolen property, attempted credit card fraud, and attempted murder. On 2 November 1996, you received nonjudicial punishment (NJP) for fraudulent appointment and wrongful use of a controlled substance. Your record reflects time lost from 21 to 27 January 1997. On 29 January 1997, Commanding Officer, Transient Personnel Unit notified you of

administrative separation proceedings against you on the basis of defective enlistment/fraudulent entry and misconduct due to drug abuse. You waived your right to appear before an administrative separation board. On 14 February 1997, you were discharged from the Navy on the basis of misconduct and received an other than honorable discharge and a reentry (RE) code of RE-4.

In your application for correction, you ask for an upgrade to your discharge characterization from other than honorable to honorable. You state that you believe that the anxiety and stress to which you were subjected to while underway during ██████████ impacted your conduct and resulted in you smoking marijuana. You also state that at the time of your military service, you had not yet been diagnosed with ADHD. You provide a 15 July 2021 statement from your civilian Medical Provider which indicates that you are currently a patient at ██████████ ██████████ and have been receiving care since 30 October 2018. You have been diagnosed with ADHA, predominately inattentive type and are taking Adderall.

As part of the review process, a Physician Advisory reviewed your request and issued an Advisory Opinion dated 24 October 2021. The Advisory Opinion noted that you contend that you smoked marijuana due to the anxiety and stress you experienced while you were underway. However, the Advisory Opinion noted that you did not describe any traumatic events or other stressors unique or different than faced by Sailors on deployment. The Advisory Opinion considered the July 2021 letter from your civilian provider at ██████████ but noted that the documents provided did not include a clinical history of onset, or type of symptoms comprising the diagnosis, or a description of the contended mental health condition's effect on your occupational functioning while in the Navy or its relationship to your misconduct. The Advisory Opinion concluded that the available evidence failed to establish that you suffered from a mental health condition at the time of your military service or that your in-service misconduct could be attributed 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 considered the post-service clinical information you provided as well as the analysis and conclusions of the Advisory Opinion. The Board substantively concurred with the Advisory Opinion and determined that the available evidence does not establish that you suffered from a mental health condition (to include ADHD) at the time of your military service that may have mitigated your misconduct as reflected in your 2 November 1996 NJP. The Board found that your fraudulent appointment and wrongful use of marijuana while on active duty supported the other than honorable discharge you received. Accordingly, the Board found that your record does not reflect an error or injustice that merits corrective action.

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

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