



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: 6302-21
Ref: Signature Date



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 29 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). Additionally, the Board also considered the advisory opinion (AO) furnished by a qualified mental health provider, which was previously provided to you.

In accordance with your admission, during your enlistment processing you answered "yes" to having tried, used or possessed any narcotics, depressants, stimulants, hallucinogens, cannabis or any mind-altering substances on DD Form 1966. A waiver for you to enlist was not required and you enrolled in the Delayed Entry Program (DEP) on 27 January 2001. On 12 February 2001, you were administratively separated from the DEP for a medical disqualification which existed prior to your service. This administrative remark contained a paragraph describing you were receiving an entry level separation without a discharge characterization of service and notifying you that reenlistment may not be effected without prior approval of Commanding Officer, Navy

Recruiting District. On 31 May 2001, during your second enlistment processing, you answered “yes” to having been rejected for enlistment, reenlistment, or induction by any branch of the Armed Forces of the United States on DD Form 1966 and admitted to using marijuana twice; the last time being 20 January 2001. A waiver interview was conducted and an enlistment waiver was granted.

You enlisted in the U.S. Navy and began a period of active duty on 28 June 2001. On 1 July 2002, you received Non-Judicial Punishment (NJP) for being in an unauthorized absence (UA) status. On 6 November 2002, you received a second NJP for two specifications of disrespect towards a superior commission officer and communicating a threat. On 25 September 2003, you received a third NJP for wrongful use of methamphetamine.

On 24 September 2003, you were notified of your pending administrative separation due to drug abuse, at which time, you waived all of your procedural rights. On 26 September 2003, you were notified of the commanding officer’s (CO) intent to recommend to the separation authority that you be discharged with an other than honorable (OTH) discharge for drug abuse. On 20 October 2003, the separation authority agree with your CO and directed you be discharged with an OTH for drug abuse. On 24 October 2003, you were so discharged.

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 assertions that: (1) you were told by a master-at-arms that a urinalysis with your name tested positive for drugs; (2) the command master chief advised you to not deny anything; (3) you were coerced into accepting the positive results; (4) there was no evidence that connected you to a positive test; (5) you were not fed or allowed to go to your quarters until you signed paperwork; (6) you were a product of poor psychological evaluations by the military; (7) you never waived your right to an administrative board; (8) you did everything asked of you and received a lack of leadership; (9) when legal counsel was offered it was in a language incomprehensible to a 22 year old high school graduate; (10) you should have been given a psychological evaluation; (11) you admitted to using marijuana during your initial enlistment processing and told your recruited your urine would test positive; (12) you never used drugs during your enlistment; and (13) you incurred PTSD as a result of harassment and racism imposed on you during your service. You also assert the military is full of euro-Caucasian colonizers, liars, “paper alterers,” hazers, harassers, and rapist.

The AO noted there is no post-service evidence of a diagnosis of PTSD and the limited post-service medical records do not provide sufficient evidence to support your claim. The AO opined, based on the available evidence, there is insufficient evidence that you incurred PTSD or were experiencing an unfitting mental health condition during your military service, and there is insufficient evidence that your misconduct should be attributed to PTSD or an unfitting mental health condition.

Your rebuttal, dated 15 December 2021, was accompanied by new but not material evidence in support of your claim. Unfortunately, per an additional AO dated 20 December 2021, the new medical records you provided did not offer sufficient information regarding an onset to determine that the mental health concerns began during service. As such, the mental health

professional opined, there remains insufficient evidence that all of your misconduct could be mitigated by your mental health condition and the original AO stands as written.

On 28 December 2021, we received a second rebuttal where you submitted a personal statement and additional medical documentation asserting you have fourth degree multiple sclerosis as a result of carrying heavy boxes, ship injuries, continuous work, and back stressors. An AO of 29 December 2021 opined, based on the new evidence, there is evidence you may have been experiencing early psychological symptoms of a possibly unfitting mental health condition during military service, but there is insufficient evidence that you exhibited the range of symptoms, or severity of symptoms, that would have led to a diagnosable unfitting mental health condition during military service. Additionally, there remains insufficient evidence that all of your misconduct could be mitigated by your mental health conditions and the original AO stands as written.

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. 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. Additionally, the Board noted, aside from your statements and congressional correspondence, you did not submit advocacy letters or post-service documents 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 that your misconduct, as evidenced by your drug use and NJPs, outweighed these mitigating factors. 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 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,

2/3/2022

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Executive Director

Signed by: █