



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: 6330-21
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 the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 limitation 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 14 March 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, 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). In addition, the Board considered the advisory opinion (AO) furnished by a qualified mental health professional dated 14 January 2022, and you were given 30 days in which to submit a response. When you did not provide a response, your case was submitted to the Board for consideration

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 Marine Corps and began a period of active duty on 4 October 1989. On 28 August 1989, an Alcohol and Drug Abuse Screening Certificate revealed your pre-service marijuana use. At that time, a drug waiver was not required, and you acknowledged and signed a

Drug and Alcohol Abuse Statement of Understanding. On 22 December 1989, you were given a retention warning due to a Defective enlistment involving your pre-service civil involvement. On 22 February 1990, you were briefed on the Navy's Substance Abuse Program. On 20 July 1992, you were advised of the Navy's policy in preventing and eliminating drug and alcohol abuse. On 16 November 1992, a Navy Drug Lab message reported you tested positive for marijuana use. On 20 November 1992, you received nonjudicial punishment (NJP) for wrongful use of marijuana. Additionally, you were notified of administrative discharge action due to drug abuse. After you were afforded your procedural rights, you elected to waive your right to have your case heard before an administrative discharge board. On 23 November 1992, you were evaluated by medical personnel and found not drug dependent. On 25 November 1992, your case was forwarded to the separation authority with the recommendation that you receive an other than honorable (OTH) discharge due to drug abuse. On 9 December 1992, the separation authority directed that you separated from the Navy with an OTH discharge due to drug abuse. On 21 December 1992, you were discharged from the Navy with an OTH characterization of service. The Naval Discharge Review Board (NDRB) denied your request for an upgrade to your characterization of service in September 1994. This Board also previously denied your request for an upgrade on 10 December 2010 and reconsideration on 11 July 2014.

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 suffering from a mental health condition during your service. The AO noted that based on the available evidence, the preponderance of available objective evidence failed to establish you suffered from a mental health condition at the time of your military service or that your in-service misconduct could be mitigated by a 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 assertions that your characterization of service was previously upgraded. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, that resulted in NJP for wrongful drug use, outweighed these mitigating factors. The Board also concurred with the AO that based on the available evidence, the preponderance of available objective evidence failed to establish you suffered from a mental health condition at the time of your military service and that your in-service misconduct could not be mitigated by a mental health condition. Based on these findings, the Board concluded your conduct while on active duty was a significant departure from that expected from a Sailor and continues to merit an Other than Honorable characterization of service. The Board also found no evidence that your characterization of service was previously upgraded by this Board or the NDRB. 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,

3/22/2022

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Executive Director

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