



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: 6409-21
Ref: Signature Date



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 5 January 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). The Board also considered an advisory opinion (AO) from a qualified mental health professional dated 2 November 2021, which was previously provided to you.

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 25 November 1991. On 3 March 1993, you received non-judicial punishment (NJP) for wrongful use of amphetamine/methetamine. On 7 June 1993, you were notified that you were being

recommended for administrative discharge from the Marine Corps by reason of misconduct due to drug abuse. You were advised of, and exercised your procedural right to consult with and be represented by military counsel, and your right to present your case to an administrative discharge board (ADB). Your commanding officer (CO) recommended that you be administratively discharged from the Marine Corps with an other than honorable (OTH) characterization of service. Prior to the separation authority's decision, after consulting with military counsel, you waived your procedural right to present your case to an ADB. The separation approved the CO's recommendation and directed your administrative discharge from the Marine Corps with an OTH characterization service by reason of misconduct due to drug abuse. On 11 September 1993, you were so discharged.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 2 November 2021. The AO noted that your record only contained diagnoses of substance and alcohol use disorders. You did not provide post-service evidence that you incurred an unfitting mental health condition in service. Additional information, such as post-service records describing the symptoms associated with the mental health diagnosis and its specific link to your misconduct, are required to render an alternate opinion. Should you choose to submit additional records, they will be reviewed in context of your claims. The AO concluded by opining that there is insufficient evidence that you may have incurred an unfitting mental health condition during your military service, and there is insufficient evidence that your misconduct could be mitigated by a mental health condition.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contentions that: 1) you received harassment regarding your sexual orientation and was under a tremendous amount of stress; 2) your First Sergeant was pushing hard to get you discharged for your positive urinalysis; and 3) you were forced out of the Marine Corps because you was "gay." Unfortunately, after careful consideration of your statement, the AO and applying liberal consideration, the Board did not find an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service.

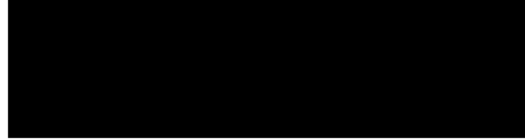
The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to your contentions as previously discussed and your desire to upgrade your discharge character of service. The Board noted you did not submit any supporting documentation or advocacy letters in support of your application. Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your NJP involving the wrongful use of a controlled substance in light of the Marine Corps policy of zero tolerance, outweighed these mitigating factors. Accordingly, given the totality of the circumstances, the Board determined 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,

1/19/2022



Executive Director

Signed by: █