



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: 6547-21
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.

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.

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 4 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 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 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 the advisory opinion (AO) furnished by a qualified mental health provider, which was previously provided to you. Although you were afforded the opportunity to submit a rebuttal, you did not do so.

You enlisted and began a period of active duty in the Navy on 20 October 1978. On 20 October 1980 you received nonjudicial punishment (NJP) for the wrongful appropriation of lunch rations valued at \$1.40 in violation of Article 121, Uniform Code of Military Justice (UCMJ). On 9 November 1982 you were convicted by special court martial (SPCM) of seven specifications of an attempt to wrongfully possess, transfer, and sell 110 doses of mescaline in violation of Article 80, UCMJ. You were sentenced to confinement at hard labor for four months, forfeiture of \$375 pay

per month for four months, reduction in rank to the pay grade of E-1, and discharge from the service with a bad conduct discharge. You were released from confinement on 16 February 1983. On 20 April 1983 you received a second NJP for two specifications of unauthorized absence for a 6 day and 12 day period in violation of Article 86, UCMJ. On 11 October 1983 you were separated with a bad conduct discharge.

You contend you were 19 years old, alone for the first time, and too young and alone to defend yourself. You state you were not selling drugs and your appointed attorney talked you into pleading guilty. You state the attorney said that if you went to court, you would never get a job or go to school. You contend that if you had good representation the case would have been dismissed and that you were caught with paper that had baking powder on it. Additionally, on your application, you indicated that a mental health condition was related to your request.

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 and desire to upgrade your discharge. The Board also relied on the AO in making its determination. The AO noted that there was no evidence that you were diagnosed with a mental health condition in-service and you provided no post-service medical records to support your claim. Consequently, the AO concluded that there was insufficient evidence that you incurred an unfitting mental health condition during military service or that your misconduct could be attributed to an unfitting mental health condition. Based upon this review, the Board concluded that the potentially mitigating factors in your case were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your two NJPs and SPCM, 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,

3/22/2022

[REDACTED]
Executive Director

Signed by: [REDACTED]