



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: 6550-21
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.

A three-member panel of the Board, sitting in executive session, considered your application on 10 January 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 18 November 2021, which was previously provided to you.

You enlisted in the Navy and began a period of active duty on 11 August 1982. On 15 October 1986, You were the subject of Commanding Officer's (CO) Meritorious Mast for superb extra efforts you put forth in remodeling the squadron's coffee mess and sacrificing your liberty time to benefit your shipmates through work outside of your normal duties. On 10 November 1987, a Report of Urine Sample stated you tested positive for cocaine use. On 8 December 1987, you received nonjudicial punishment (NJP) for wrongful use of cocaine. On 12 December 1987, you submitted an appeal of your NJP on the grounds that the punishment awarded was unjust. You asserted that the urinalysis was not conducted in accordance with Navy directives. On

14 December 1987, you were notified of administrative discharge action by reason of misconduct due to drug abuse. After you were advised of your procedural rights, you elected to have your case heard before an administrative discharge board (ADB). Additionally, you were interviewed and examined for evidence of drug or alcohol dependency. It was determined that you were not physically or psychologically dependent on drugs or alcohol, and that your use of cocaine appeared to be episodic and recreational. On 21 December 1987, your appeal of NJP was forwarded to the convening authority for review and response. It was stated that your plea of guilty at Captain's Mast was sufficient to find you guilty of the charge enumerated. On 7 January 1988, the convening authority denied your appeal of NJP, noting that Navy directives at the time of your NJP, allowed the coordinator and the observer to be one in the same, and that the "two-man rule" was not required for the evidence presented at your NJP hearing. In view of your plea of guilty and the standard of proof required at NJP, which is by a "preponderance of evidence," there was sufficient facts to find you guilty. It was determined that the punishment awarded was just, fair, and completely within the authorized limits of your commanding officer. On 21 January 1988, the ADB found that you had committed misconduct due to drug abuse and recommended you receive an other than honorable (OTH) discharge. On 28 January 1988, your case was forwarded to the separation authority. It stated that you had performed well while attached to the squadron and there was no justification of your use of cocaine. Further, in support of the Navy's "Zero Tolerance" to drug abuse, it recommended your separation from the Navy under other than honorable conditions. On 4 February 1988, the separation authority concurred and directed your OTH discharge due to drug abuse. On 5 February 1988, you were discharged from the Navy with an OTH characterization of service.

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 an opioid addition or mental health condition during your service. The AO noted that based on the available evidence, there is insufficient evidence that you incurred an unfitting mental health condition during military service, and there is insufficient evidence that your misconduct could be mitigated by an unfitting 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 you incurred an opioid addition following treatment for a foot injury, which resulted in your misconduct. 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 NJP for wrongful drug abuse and denial of your NJP appeal outweighed these mitigating factors. Additionally, the Board concurred with the AO that based on the available evidence, there is insufficient evidence that you incurred an unfitting mental health condition during military service, and there is insufficient evidence that your misconduct could be mitigated by an unfitting mental health condition. 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,

1/21/2022

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Executive Director

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