



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: 6561-21
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 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 7 February 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 10 December 2021, which was previously provided to you.

You enlisted in the Navy and began a period of active duty on 2 February 1984. On 7 February 1984, you were briefed on the Navy's policy regarding drug and alcohol abuse. On 12 October 1984, you received nonjudicial punishment (NJP) for wrongful use of marijuana and cocaine. Additionally, you were counseled and warned that further misconduct, could result in administrative discharge action. On 13 February 1985, you were notified that you were being retained in the Navy. You were counseled regarding drug and alcohol abuse and warned that further deficiencies in your performance or conduct, could result in administrative discharge action. On 25 October 1985, a Drug and Alcohol Report stated you had no potential for further Navy service and documented your declining performance and positive test for cocaine on

2 October 1985. Accordingly, on 29 October 1985, you were notified of administrative discharge action by reason of misconduct due to drug abuse. After being afforded your procedural rights, you elected to have your case heard before an administrative discharge board (ADB). On 26 December 1985, a Drug and Alcohol Report stated you had no potential for further Navy service. You were an excellent worker, your performance had declined, you were cited for having an open container, and another positive test for cocaine on 18 November 1985. On 23 January 1986, an ADB found that you had committed misconduct due to drug abuse and recommended you receive an other than honorable (OTH) discharge. On 10 February 1986, your case was forwarded to the separation authority concurring with the ADB findings and recommendations. On 25 February 1986, the separation authority directed you receive an OTH discharge for misconduct due to drug abuse, and to offer you in-patient treatment via the Department of Veterans Affairs. On 5 March 1986, 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 whether the evidence suggests you were suffering from a mental health condition during your service. While you did not specify that your incurable disease was a mental health condition, the Board referred your case to the mental health professional in order to ensure that a thorough review of your case was conducted. 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 attributed to 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 suffered from a disease that there was no known cure, and you have live a drug free life. 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 use and two additional positive tests, outweighed these mitigating factors. Further, the Board considered that you were briefed on the Navy's policy regarding drug and alcohol abuse and counseled on more than one occasion of the consequences of further misconduct before your discharge. The Board also 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 attributed to 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,

2/11/2022

