



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: 6667-21

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.

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 25 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 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). Additionally, 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 an opportunity to submit an AO rebuttal, you did not do so.

You originally enlisted in the Navy on 29 November 1955 at the age of seventeen. On 16 July 1956 you were convicted at a Summary Court-Martial (SCM) of the misbehavior of a sentinel/lookout by failing to remain alert. You were sentenced to restriction and forfeitures of pay. On 15 February 1957 you were convicted at a second SCM of unauthorized absence (UA) on two separate occasions totaling fourteen days. You were sentenced to restriction and forfeitures of pay.

On 17 March 1958 you received non-judicial punishment (NJP) for failing to obey a lawful order. You did not appeal your NJP. On 10 July 1958 you were convicted at a third SCM of UA. You were sentenced to hard labor without confinement and forfeitures of pay

In May of 1959 the Office of Naval Intelligence (ONI) conducted an investigation into your drug use and drug possession on board the █. You provided a statement admitting to introducing marijuana on board the ship and smoking marijuana cigarettes on multiple occasions while on the ship.

On 13 June 1959 your command notified you that you were being processed for an administrative discharge by reason of unfitness due to unauthorized use and possession of marijuana aboard ship. You expressly waived your rights to be represented by counsel at an administrative separation board (Adsep Board), to submit statements on your own behalf, and to request and appear in person before an Adsep Board. Ultimately, on 14 August 1959 you were discharged from the Navy by reason of unfitness with an other than honorable conditions (OTH) characterization of service and not recommended for reenlistment.

On 24 April 2001 the Board denied your initial petition for relief you filed when you were incarcerated in the state of █ at the █ Correctional Center. The Board determined that your contentions and mitigating factors were not sufficient to warrant upgrading your discharge.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 15 January 2022. The Ph.D. initially noted that your active duty records did not contain evidence of a mental health condition diagnosis or reported psychological symptoms/behavioral changes indicative of a diagnosable unfitting mental health condition. The Ph.D. noted that you did not provide any clarifying information about the trauma related to your purported PTSD. The Ph.D. also noted that your statement to ONI during its 1959 investigation did not indicate your marijuana use was the result of possible mental health symptoms. The Ph.D. concluded by opining that the evidence failed to establish you suffered from a mental health condition on active duty 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 Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, that upgrading your discharge would enable you to obtain better medical care and not be homeless. However, given the totality of the circumstances, the Board determined that your request does not merit relief.

In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. As a result, the Board

concluded that your misconduct was not due to mental health-related symptoms. Moreover, the Board observed that you did not submit any clinical documentation or treatment records to support your mental health claims despite a request from BCNR on 25 October 2021 to specifically provide additional documentary material. Even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions.

Additionally, the Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. Lastly, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational, employment, or housing opportunities. The Board carefully considered any matters submitted regarding your post-service conduct and accomplishments, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that given the totality of the circumstances your request does not merit relief. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard for mental health conditions, the Board concluded that your cumulative misconduct clearly merited your receipt of an OTH.

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,

3/3/2022

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Executive Director

Signed by: █