



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: 6744-21
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.

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.

A three-member panel of the Board, sitting in executive session, considered your application on 3 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 16 November 2021, which was previously provided to you, your rebuttal to the AO dated 16 November 2021, and updated AO dated 10 December 2021, which is enclosed.

You enlisted in the Navy and began a period of active duty on 29 July 1992. On 7 May and 4 August 1993, you received nonjudicial punishment (NJP) for assault and battery, and insubordinate conduct. On 11 February 1994, you were convicted by civil authorities of speeding. On 15 February 1994, you received NJP for wrongful use of marijuana and a brief period of unauthorized absence. On 2 March 1994, you were notified of administrative

discharge action due to commission of a serious offense, drug abuse, and convenience of the government due to a Personality Disorder. After being advised of your procedural rights, you elected to submit a personal statement on your behalf. On 4 March 1994, you received NJP for three specifications of failing to go to your appointed place of duty, and failing to obey an order. On 7 March 1994, a medical evaluation determined you were not psychologically or physiologically dependent on marijuana. However, you were diagnosed with a Personality of such severity as to interfere with your military performance, determined to be a continuing risk to do harm to yourself or others, and manifested a longstanding disorder of character and behavior, which was of such severity as to render you incapable of serving adequately in the Navy. On 9 March 1994, a Drug and Alcohol Report stated you were not drug dependent. On 16 April 1994, your case was forwarded to the separation authority with the recommendation that you receive an other than honorable (OTH) discharge. On 21 April 1994, the separation authority directed that you received an OTH discharge due to commission of a serious offense. On 29 April 1994, 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 Post-Traumatic Stress Disorder (PTSD) during your service. The AO noted that based on the current 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. On 1 December 2021, you submitted a rebuttal to the AO stating, in part, that you noticed how your medical diagnoses and what led to your OTH discharge, was not the focus, and that an opinion was submitted with erroneous information discrediting your overall character. Additionally, the AO did not thoroughly review your military records with respect to your document suffering of a severe mental illness prior to your discharge and the timeline of events, the military made the choice to leave your PTSD untreated and instead recommend and expeditious separation, and further explaining your traumatic events. On 10 December 2021, a qualified mental health professional reviewed your rebuttal to the AO and provided the Board with a response to your rebuttal. The AO noted you provided no new medical records. You contended that you received service connection for PTSD from the Department of Veterans Affairs (DVA), but only provided your personal statement to the DVA and no other documentation. While it is possible that your in-service mental health diagnosis was incorrect, there is no confirming post-service medical documentation to support your contentions, and concur with original AO.

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: (a) you were, separated with an OTH discharge for THC use, which was detected after your six-month deployment in 1993, in which you witnessed eight deaths; (b) after your deployment, you smoked marijuana for the first time as result of witnessing the deaths on your ship; (c) when you returned from deployment, you went home on leave and smoked in severe shock; and (d) you did not use drugs or alcohol until returning from deployment, and that you waited longer than three years to submitted your application due to substance abuse and instability. 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 four NJPs (one of which was for drug

abuse), civil conviction, and medical evaluation outweighed these mitigating factors. Additionally, the Board concurred with the AO that based on the current 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,

1/19/2022

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Executive Director

Signed by █

Enclosure