



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

█
Docket No: 7178-21
Ref: Signature Date

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Dear █

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 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 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 enlisted in the Navy on 10 July 2000. Your pre-enlistment medical examination on 20 November 1999 and self-reported medical history noted no psychiatric or neurologic conditions or symptoms. At the completion of initial recruit training, on 21 October 2000 you reported for duty on board the USS █ (█) in █. On 21 April 2002 you reported for temporary duty on board Service School Command at Naval Station, █.

On 10 May 2002 you received non-judicial punishment (NJP) for the wrongful use of marijuana. You did not appeal your NJP. On 10 May 2002 you refused to be screened by a Medical Officer for drug dependency, and you declined to accept any/all recommended treatment for alcohol/drug dependency.

On 10 May 2002 you were notified that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. You waived your rights to consult with counsel, to submit statements to the separation authority, and to request an administrative separation board. Ultimately, on 31 May 2002 you were discharged from the Navy for misconduct with an other than honorable (OTH) characterization of service and assigned an RE-4 reentry code.

On 13 May 2011 the Naval Discharge Review Board (NDRB) denied relief. The NDRB determined that your discharge was proper as issued and that no change was warranted. The Board noted that you did not raise any mental health concerns with your NDRB application.

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 12 January 2022. The Ph.D. initially observed that your active duty records did not contain evidence of a mental health diagnosis or reported psychological symptoms/behavioral changes indicative of a diagnosable unfitting mental health condition. The Ph.D. noted that you did not present evidence indicating your experience of life stressors was extraordinary or unique or that you met the diagnostic criteria for a mental health condition on active duty. The Ph.D. also noted that although healthy coping skills are important, the lack thereof does not constitute a mental health condition. The Ph.D. further noted that there were many other treatment modalities used within the military healthcare system to treat the medical/mental health conditions for which medical marijuana is prescribed that fall within existing laws, regulations, and medical standards of care. The Ph.D. concluded by opining that the preponderance of available objective 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 your contentions that: (a) two weeks after 9/11 you were sent on a six-month deployment; (b) you worked in aviation ordinance so every day you saw magazines full of missiles, rockets, ammunition, and planes were constantly being launched as you floated in the middle of the sea; (c) it was difficult to sleep because you were always on high alert and at sea for four months before stopping anywhere; (d) you used marijuana to relieve high stress and anxiety resulting from your deployment on the aircraft carrier; and (e) you did not know what PTSD was until years after being discharged and you later learned that doctors were treating patients with marijuana. 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, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record clearly reflected that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. 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.

The Board also observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average in conduct was 2.0. Navy regulations in place at the time of your discharge required a minimum trait average of 2.5 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your drug-related misconduct which further justified your OTH characterization of discharge.

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 or employment 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 misconduct clearly merited your receipt of an OTH characterization.

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,

3/9/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]