

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

> Docket No: 7319-21 Ref: Signature Date



Dear

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 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 Board waived the statute of limitation 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 20 May 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 to 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health provider and licensed clinical psychologist which was previously provided to you. You were afforded an opportunity to submit a rebuttal to the AO, but did not.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Marine Corps and began a period of active service on 12 February 2001. You served for almost 3 years prior to receiving nonjudicial punishment, for which you were reduced to Private First Class. On 2 July 2004, a Naval Drug Lab message reported that your urinalysis test was positive for marijuana metabolites. You were notified of processing for administrative separation for misconduct due to drug abuse and, on 11 August 2004, convicted by Summary Court-Martial (SCM) of violating Article 112a, wrongful use of a controlled substance, and Articled 134. You waived your hearing before an administrative separation board, and you were discharged on 26 August 2004 with an Other Than Honorable (OTH) characterization of service due to drug abuse.

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. The Board carefully weighed all potentially mitigating factors, such as your desire to upgrade your discharge and your contention that your discharge is unjust because you voluntarily enlisted to serve, that you served for over 3 years as an assaultman, that you developed post-traumatic stress disorder (PTSD) from your high level of responsibility for weaponry and fear for your life, and that you used marijuana to cope with stress. The Board noted that you also contend earning several awards, to include a Good Conduct Medal; however, there is no evidence in your record of a GCM being issued, which does not appear to be an error since your first documented instance of misconduct appears to pre-date the requisite 3-year period of continuous honorable service for the award of the GCM. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Because you contend a mental health condition, the Board also considered the AO, which noted in pertinent part:

Petitioner's OMPF did not contain evidence of a diagnosis of a mental health condition. Unfortunately, Petitioner did not provide clarifying information about the trauma related to his PTSD (i.e., when the trauma occurred, symptoms experienced). The lack of clarifying information made available did not provide enough markers to establish an onset and development of mental health symptoms or identify a nexus with his misconduct. Although Petitioner acknowledged his smoked marijuana as a means to cope with stress, there was no evidence presented that indicated Petitioner's experience of life stressors was extraordinary or unique or that Petitioner met the diagnostic criteria for a mental health condition during his military service.

The AO concluded, "[b]ased on the available evidence, it is my considered clinical opinion the preponderance of available objective evidence failed to establish Petitioner suffered from a mental health condition at the time of his military service or his in-service misconduct could be mitigated by a mental health condition."

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 and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. Further, the Board concurred with the AO that there was insufficient evidence that your misconduct could be mitigated by a mental health condition. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. Accordingly, the Board determined that your request does not warrant relief.

You are entitled to have the Board reconsider its decision upon the 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 is attached 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.

Sincerery,	
	6/6/2022
Executive Director	-
Signed by:	

Sincerely