



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

Docket No: 7566-21
Ref: Signature Date

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 9 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). The Board also considered an advisory opinion (AO) from a qualified mental health professional dated 13 January 2022, which was previously provided to you.

You enlisted in the Navy and began a period of active duty on 20 September 1988. On 23 July 1992, you received non-judicial punishment (NJP) for wrongful use of a controlled substance. That same day, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to drug abuse. You were advised of, and waived your procedural rights to consult with military counsel and to present your case to an administrative discharge board (ADB). Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an other than honorable (OTH) characterization of service. The SA approved the CO's recommendation and directed your OTH

discharge from the Navy by reason of misconduct due to drug abuse. On 24 September 1992, you were so discharged.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 13 January 2022. The AO noted that in service, you were diagnosed with a █. Post-service, you have received several █ through the Department of Veterans Affairs (VA). Unfortunately, the opinion noted there was no context for the VA diagnoses, such as a description of symptoms or onset, to provide support for your claims. While your statement is consistent with your service record and could represent a nexus with your misconduct, as your NJP for substance use occurred after your service in the █, the AO concluded it is unusual that self-medication with marijuana would be limited to a single event. Given your substance use history prior to entry into service, the AO determined additional records are required to clarify whether a nexus actually exists and to render an alternate opinion. As a result, the AO concluded by opining that there is insufficient evidence that you may have incurred █ or another █ during military service and that there is insufficient evidence that your misconduct could be attributed to █ or another █.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contention that you were sexually assaulted by a superior. You further contend that because you were sexually assaulted by a close family member when you were younger and told by your family how to handle it, you could not process the assault or even tell someone. As a result, you started using negative coping mechanisms, such as drinking heavily, smoking cannabis, and staying in denial for many years. Unfortunately, after careful consideration of the AO, your supporting documentation, and applying liberal consideration, the Board did not find an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service.

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 contentions as previously discussed and your desire to upgrade your discharge character of service. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters. Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your NJP for the wrongful use of a controlled substance, in light of the "zero tolerance" drug policy, outweighed any mitigating factors. Additionally, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or sufficient evidence to warrant clemency. Accordingly, given the totality of the circumstances, the Board determined 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, _____

3/24/2022

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Executive Director

Signed by: █