



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

█
Docket No: 125-22
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 4 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 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)/mental health condition (MHC) (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 opinions (AO) from a qualified mental health professional dated 1 March 2022 and your rebuttal to the AO.

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

You entered active duty with the Marine Corps on 1 December 2003. On 17 May 2005, you received non-judicial punishment (NJP) for wrongful use and possession of a controlled substance (Steroids). Subsequently, you were notified of pending administrative separation action by reason of misconduct due to drug abuse. You elected to consult with legal counsel and subsequently requested an administrative discharge board (ADB). The ADB found that you committed misconduct due to drug abuse and recommended you receive an Other Than Honorable (OTH) characterization of service with your discharge being suspended.

On 20 September 2005, the separation authority (SA) disagreed with the ADB and directed an OTH discharge by reason of drug abuse. On 17 February 2006, 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 1 March 22. The AO stated in part:

Petitioner's OMPF did not contain evidence of a diagnosis of a mental health condition or reported psychological symptoms/behavioral changes indicative of a diagnosable mental health condition. Records did show one instance of misconduct for use of steroids. In contrast, evidence submitted by Petitioner supported a post-discharge diagnosis of PTSD; however, it did not provide sufficient evidence of markers of PTSD during his military service. Petitioner was represented by counsel at the ADB and there is no indication a mental health evaluation was requested or considered. Petitioner's character statements described Petitioner as having no issues with social or occupational deficiencies. Although Petitioner explained, in his BCNR application, his "...mental wellbeing and decision-making process was undermined by my multiple traumatic experiences..." which led to his steroid use, his testimony at the ADB indicated he was aware of his actions/choices.

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 PTSD at the time of his military service or his in-service misconduct could be mitigated by PTSD." The Board also considered your rebuttal evidence submitted in response to the 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 desire to upgrade your discharge and contentions that you incurred a mental health condition and PTSD during military service, that the condition contributed to your misconduct, that your discharge was too severe, and that your service to the Marine Corps was faithful. The Board also considered the advocacy letters submitted with your application.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJP, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it showed a complete disregard for the "Zero Tolerance" drug policy of the Department of the Navy. As a result, the Board concluded that the preponderance of the evidence supports a finding that your conduct was a significant departure from that expected from a Marine and continues to warrant an Other than Honorable characterization of service. 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, 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, _____

5/11/2022

█

Executive Director

█