



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

██████████
Docket No: 0233-22
Ref: Signature Date

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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 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 11 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 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 which was previously provided to you. You were afforded an opportunity to submit a rebuttal to the AO, but did not.

You enlisted in the Navy began a period of active service on 8 July 2003. Your service records reflect that you served in the engineering and weapons rating of machinist's mate (MM), successfully completing over 60 weeks of nuclear power training and attaining the rank of MM3 by January of 2004. You served without documented incident for nearly 3 years, until you were subject to nonjudicial punishment (NJP) on 27 April 2006 for a violation of Article 112a, wrongful use of a controlled substance – specifically, marijuana. Your evaluation report for the period following your NJP noted that your performance was commendable prior to your misconduct and that you had maintained a positive attitude while pending administrative action.

You were processed for administrative separation for misconduct due to drug abuse as provided for by service regulations and discharged on 23 May 2006 with an other than honorable characterization of service.

The Board carefully weighed all potentially mitigating factors, such as your desire to upgrade your characterization of service and your contention that you suffered an undiagnosed mental health condition during your military service which contributed the behaviors and drug abuse during your military service that resulted your discharge for associated misconduct. The Board noted that you submitted documentary evidence from October of 2009 reflecting your post-service diagnoses of Bipolar I disorder, manic with psychotic features, and polysubstance abuse in support of your contentions.

Because you contend a mental health condition either incurred in or aggravated by active military service, the Board considered your service records in conjunction with the AO. The AO observed that your service records contain no diagnosis of any MH condition and lack evidence of symptoms or behavioral changes indicative of such a condition. In fact, the AO noted that evaluations of your performance both before and after your misconduct express no indication of any occupational dysfunction and that you provided no description of the symptoms you experienced during your military service or how those symptoms impacted your behavior at that time. Given the lack of clarifying information available, the AO assessed the evidence insufficient to establish onset and development of mental health symptoms during your military service or to identify a nexus with your misconduct.

The Board concurred with the opinion of the AO that preponderance of available, objective evidence failed to establish that you suffered from a mental health condition at the time of your military service or that your misconduct could be attributed to such condition. As a result, the Board concluded the potentially mitigating factors you submitted were insufficient to warrant relief. Specifically, the Board determined that your misconduct, evidenced by your NJP for wrongful use of a controlled substance, outweighed the factors you submitted for consideration. Accordingly, the Board determined that your request does not merit 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.

Sincerely,

3/23/2022

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Executive Director

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