



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



Docket No: 318-22  
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 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 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 the advisory opinion (AO) furnished by a qualified mental health provider, which was previously provided to you. Although you were afforded the opportunity to submit a rebuttal, you did not do so.

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 enlisted and began a period of active duty in the Navy on 28 May 2009. Your Evaluation Report and Counseling Record for the period of 15 November 2017 to 18 September 2018 states you were reduced in rate to Petty Officer Second Class due to a nonjudicial punishment proceeding for wrongful use of a controlled substance in violation of Article 112a, Uniform Code of Military Justice. The evaluation further indicates you tested positive for THC (marijuana) on a urinalysis

screening, admitted to use, and your command initiated administrative separation processing. Your records do not include the documentation for your administrative separation for drug abuse. Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated from the Navy on 21 November 2018, with an "Under Other Than Honorable Conditions" characterization, your narrative reason for separation is "Misconduct (Drug Abuse)," your separation code is "HKK," and your reenlistment code is "RE-4."

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 completed a period of prior service and received an Honorable characterization of service. You also state, during that time, you sustained a head injury from a motorcycle accident that later resulted in an increase in aggression and substance abuse. You provided copies of a brain scan with your application that you contend reflect trauma to the front, right portion of your brain. You further state this injury made you vulnerable to substance abuse and anger. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

The Board relied on the AO in making its determination. The AO noted in pertinent part:

Although Petitioner indicated on his application he suffered from PTSD and MHC which may have attributed to his in-service misconduct, his explanation and supporting documentation indicated his misconduct was attributed to a traumatic brain injury (TBI). Petitioner's OMPF did not contain evidence of a diagnosis of a mental health condition, TBI, or any clinical evidence of residual symptoms of TBI. No in-service medical records, documentation of when the purported trauma occurred (i.e., motorcycle accident), or subsequent treatment were provided. 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.

The AO concluded, "[b]ased on the available evidence, it is my considered clinical opinion, there is insufficient evidence to establish if Petitioner incurred PTSD, a MHC, or TBI that could be attributed to military service, as well as whether or not his in-service misconduct/behavior can be attributed to PTSD, a MHC, or TBI."

Based upon this review, the Board concluded that the potentially mitigating factors in your case were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by the NJP documented in your Evaluation Report and Counseling Record for the period of 15 November 2017 to 18 September 2018, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug offense. Further, the Board considered that you entered the Navy on a drug waiver. Finally, the Board concurred with the AO that there is insufficient evidence as to whether your in-service

misconduct could be attributed to PTSD, a MHC, or TBI. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor 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, given the totality of the circumstances, the Board determined that 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,

6/16/2022

[REDACTED]