



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

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Docket No: 0366-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 limitation 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 21 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 14 February 2022 and your rebuttal response to the AO.

In November 1985, you answered "yes" to a pre-service use of narcotics and marijuana on NAVCRUIT 1137/7. An enlistment waiver was not required.

You enlisted in the Navy and began a period of active duty on 27 November 1985. On 5 December 1985, you were briefed on the Navy's drug and alcohol abuse policy. From December 1986 through May 1987, you received multiple counseling entries for disciplinary infractions ranging from gun-decking records and unauthorized absence (UA) to being asleep on watch. On 22 August 1987, you commenced a period of UA which lasted 97 days until to

27 November 1987. During this period of UA you also missed ship's movement. On 22 March 1988, you were found guilty at a special court-martial (SPCM) of the aforementioned UA and missing ship's movement and sentenced to restriction for 60 days, hard labor without confinement for 60 days, forfeiture of \$200.00 pay per month for two months, and to be reduced in rank to E-2. On 21 September 1988, you received your first nonjudicial punishment (NJP) for being derelict in the performance of your duties, wrongfully using marijuana/hashish, and two specifications of sleeping on watch. On 9 October 1988, a substance abuse report documented you were not drug or alcohol dependent. On this date you were also found guilty at a summary court-martial (SCM) of disobeying a lawful order by possession of drug paraphernalia and wrongful use, possession, and introduction of marijuana. You were sentenced to be confined for 30 days. Further, you were notified of your commanding officer's (CO) intent to recommend you be administratively discharged for misconduct, drug abuse. You waived all of your procedural rights and did not desire to submit a statement on your own behalf. Your CO's recommendation also documented you repeatedly broke naval regulations through unauthorized absences and drug abuse. On 29 November 1988, you received a second NJP for wrongful use and possession of marijuana and urinating in public. On 5 December 1988, the discharge authority directed you be discharged with an other than honorable (OTH) characterization of discharge by reason of drug use and, on 9 December 1988, you were so discharged.

The Board carefully considered all potentially mitigating factors in your petition to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. In your petition you contend your department of veterans affairs (VA) diagnosed condition adversely affected your behavior and mental condition thus affecting your ability to function in a normal way; adding you would like to be eligible for VA benefits.

In connection with your assertion that you suffered from a mental health condition, the Board requested, and reviewed, the AO. According to the AO:

In service, the Petitioner was diagnosed with a substance use disorder and a personality disorder, indicating the military service was not suitable to him. Throughout his disciplinary processing, there were no concerns that would have warranted a referral for evaluation. Post-service, he has diagnoses of Major Depressive Disorder and Unspecified Anxiety Disorder that the VA has requested further evaluation prior to attributing those mental health conditions to military service. Unfortunately, his personal statement and provided medical records are not sufficiently detailed to establish a nexus with his misconduct, as his misconduct is consistent with substance use disorder. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) are required to render an alternate opinion.

The AO concluded, "based on the available evidence, it is my clinical opinion that there is insufficient evidence that he may have incurred PTSD or another unfitting mental health condition during military service. There is insufficient evidence that his misconduct could be attributed to PTSD or another unfitting mental health condition."

On 28 February 2022, the Board received your rebuttal in response to the AO. You provided a statement and additional documentation in support of your application.

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 noted above and your desire to upgrade your discharge. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your repeated misconduct, as evidenced by your multiple disciplinary infractions, to include; UAs, missing ship's movement, dereliction of duty by sleeping on watch, and drug use, outweighed these mitigating factors. In making this finding, the Board considered the severity of your misconduct as well as the fact you were warned repeatedly about the consequences of continued misconduct. Additionally, the Board concurred with the AO and concluded that there was insufficient evidence that a mental health condition contributed to your misconduct. 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, _____

4/4/2022

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Executive Director

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