



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

█
Docket No: 0399-22
2340-18
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 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 9 February 2022 and your rebuttal response to the AO. In response to the new supporting documentation, an additional AO was requested and received on 25 February 2022.

You enlisted in the Navy and began a period of active duty on 9 May 1983. On 20 March 1986, you received non-judicial punishment (NJP) for wrongful use of marijuana. On 24 March 1986, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to drug abuse, at which time you elected your procedural right to consult with legal counsel and to present your case to an administrative discharge board (ADB). An ADB was convened and found that you committed misconduct due to drug abuse and recommended your administrative discharge from the Navy with an other than honorable (OTH)

character of service. Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) concurring with the ADB's recommendation. The SA approved the recommendation and directed your administrative discharge from the Navy with an OTH characterization of service by reason of misconduct due to drug abuse. On 29 July 1986, 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 9 February 2022. The AO noted that in service, you were diagnosed with █ when you first reported onboard your ship, but there was no additional record of continuing difficulties. Throughout your disciplinary processing, there were no concerns raised of a █ that would have warranted a referral for an additional evaluation. The AO further noted that within your application you had provided no post service medical evidence in support of your mental health claims. Unfortunately, your statement was not sufficiently detailed to establish a nexus with your misconduct, as your claims were largely regarding your innocence of the misconduct. The AO concluded by opining that there is insufficient evidence that you may have incurred an unfitting █ during your military service, and there is insufficient evidence that your misconduct could be attributed to an unfitting █.

In response to your submission of new supporting documentation, the mental health professional reviewed your request and provided the Board with an additional AO on 25 February 2022. The AO noted your new documentation provided support to your claims of a diagnosis of █, which is typically experienced throughout one's life. After further review, the AO concluded that based on the preponderance of the evidence there is in-service evidence that you may have incurred a brief █ (█) at one point during your military service. However, there is insufficient evidence that your misconduct could be attributed to a █.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contentions that: 1) you received prejudicial treatment in regards to the "initial accusation"; 2) there was no probable cause to justify the search and seizure that transpired; 3) the accusation was not based on eyewitness testimony or tangible evidence, it was based on your race; 4) your CO chose to detain everyone and force everyone to provide urine samples, despite the fact that no one was available to conduct the collection by the book; 5) your CO conspired against you, denying you due process by scheduling your hearing so that your counsel would not have time to investigate the circumstances; 6) the command purposely and maliciously perverted the hearing process by deliberately denying you a reasonable length of time to prepare for the hearing in consultation with your counsel; 8) your counsel did not present a case because he was not allowed to, it was impossible for him to know any details surrounding the case; and 9) your CO knew that the way the urine samples were obtained and collected did not meet the Military Rules of Evidence standard. Unfortunately, after careful consideration of both advisory opinions, your submission of 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, restore your rate/rank back to "█," and expunge any reference or record related to a drug abuse charge, NJP or administrative procedures from your permanent military record.

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined the seriousness of your misconduct as evidenced by your NJP for the wrongful use of a controlled substance, outweighed these mitigating factors. In making this finding, the Board concurred with the AOs and took into consideration the lack of any █ symptoms at the time of your discharge from the Navy when weighing the mitigation evidence in your case against your misconduct. In regard to your contentions there is no evidence in the record and you presented none to support your contentions. As a result, the Board relied on the presumption of regularity to conclude your NJP and administrative separation board were properly conducted. Therefore, based on the documentary evidence in your record, the Board determined the preponderance of the evidence supports your record of misconduct and your administrative separation from the Navy. 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,

3/24/2022

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Executive Director

Signed by: █