



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: 668-22
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 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 1 June 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 an advisory opinion (AO) from a qualified mental health professional dated 23 March 2022, which was previously provided to you.

You entered active duty with the Navy on 26 February 1986. On 23 December 1986, you received non-judicial punishment (NJP) for wrongful use of marijuana and cocaine. On 13 January 1987, the Drug and Alcohol Abuse Program (DAPA) determined that you were not drug dependent and recommended you enter a Level I treatment program and separation from the Navy. 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 a General (Under Honorable Condition) characterization of service. The separation authority (SA) concurred with the ADB and directed a General (Under Honorable Condition) characterization of service by reason of drug abuse. On 18 June 1987, 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 23 March 2022. The mental health professional stated in pertinent part:

There is no evidence in the available records that the Petitioner was diagnosed with a mental health condition during military service. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Substance use is incompatible with military readiness and discipline and considered amenable to treatment, depending on the individual's willingness to engage in treatment. While it is possible that his misconduct could be attributed to a potential substance use disorder, the Petitioner's personal statement at the time indicated an awareness of his misconduct and responsibility for his behavior. The Petitioner has provided no post-service medical evidence in support of his claims of a substance use disorder. His personal statement is not sufficiently detailed to establish a clinical diagnosis or a nexus with his misconduct. 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, "[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition.

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 have maintained gainful employment and remained in good standing with the law since discharge. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

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 that fact it included a drug related offense that involved two different controlled substances. As a result, when weighing the seriousness of your misconduct against the brevity of your active duty service, the Board concluded that the preponderance of the evidence supports a finding that the negative aspects of your service outweighed the positive aspects and continues to warrant a General (Under Honorable Conditions) characterization of service. 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 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,

6/10/2022

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Executive Director

Signed by: █