



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: 0974-22

Ref: Signature Date

Dear ■■■■■

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) (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 30 March 2022, which was previously provided to you.

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 in the Navy and began a period of active duty on 28 December 1978. Your record shows that on 16 January 1980, due to your experimental use of marijuana prior to your enlistment into the Navy, you were granted a waiver for submarine duty. On 10 April 1980, you

completed the enlisted basic submarine course and were assigned to the USS █. Upon your arrival as part of your in processing, on 28 April 1980, you were advised of the policy of the Department of the Navy (DoN) in preventing and eliminating drug abuse. You acknowledged that the use, possession, purchase, transfer and sale of controlled substances are prohibited under the Uniform Code of Military Justice (UCMJ).

On 29 January 1981, you were issued an Administrative Remarks (Page 13) counseling informing you that you were being retained in the naval service; however, any further misconduct may result not only in disciplinary action but also in processing for administrative discharge. On 20 February 1981, you were disqualified for continued duty in submarines because of your demonstrated unreliability and your enlisted submarine designator was removed. You were subsequently detached from the USS █. On 3 March 1981, you reported onboard the USS █. On 12 May 1981, you were counseled and it was explained to you that a continuation of your past performance may ultimately disqualify you from receiving an Honorable discharge. On 13 May 1981, you received non-judicial punishment (NJP) for an unauthorized absence totaling two days. On 9 June 1981, you were informed that you were not eligible for reenlistment due to your prior drug involvement. Your final conduct average was 2.8.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). 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 (as is the case at present), 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 9 June 1981, with a "General (Under Honorable Conditions)," characterization of service, your narrative reason for separation is "Unsuitability – Apathy, Defective Attitudes, and Inability to Expend Effort Effectively," your separation code is "JMJ," and your reenlistment code is "RE-4." You previously applied to the Naval Discharge Review Board and were denied relief in May 1985.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 30 March 2022. The AO stated in pertinent part:

During military service, the Petitioner was diagnosed with substance use disorder. Substance use is incompatible with military readiness and discipline and considered amenable to treatment, depending on the individual's willingness to engage in treatment. Unfortunately, the Petitioner has provided no medical records to support his claims. His personal statement is not sufficiently detailed to establish a clinical diagnosis or provide a nexus with his misconduct. The evidence is temporally remote from his military service, and inconsistent with in-service endorsement of substance use. 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, other than a potential substance use disorder. There is insufficient evidence that his misconduct could be attributed to a mental health condition, other than a potential substance use disorder.”

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 for a discharge upgrade and contentions that: (1) you were falsely accused of substance use; (2) your mental duress regarding the false accusation resulted in your request for separation; (3) you have never used drugs in your life; (4) you were not in your right mind and felt that you were being persecuted for no reason; (5) though you did not test positive, nor did you get caught smoking marijuana, you were “kicked off” of submarine duty, and put on a Navy destroyer, even though you signed up with a guarantee for submarine duty; (6) you were heartbroken, frustrated, and extremely mentally unstable at the time, and asked to be discharged since you felt that the Navy did not live up to their end of the bargain; (7) you regret pushing to be discharged; and (8) you have a very distinguished professional life. 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct and poor performance, as evidenced by your NJP and counseling, outweighed these mitigating factors. In making this finding, the Board considered your disqualification from submarine duty based on your unreliability and continued inability to perform after your transfer to USS █. Further, the Board determined that your conduct scores were insufficient to qualify for a fully Honorable characterization of service. The Board noted that characterization of service is based in part on conduct marks assigned on a periodic basis. At the time of your service, a conduct mark average of 3.0 was required to be considered for a fully Honorable characterization of service; a minimum mark you failed to achieve. Finally, the Board concurred with the AO in that there is insufficient evidence that your misconduct could be attributed to a mental health condition, other than a potential substance use disorder. Based on these factors, the Board concluded significant negative aspects of your active service outweighed the positive and continue to warrant a General (Under Honorable Conditions) 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 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,

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6/15/2022

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Executive Director

Signed by: █