



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: 1311-22
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). Your current request has been carefully examined by a three-member panel of the Board, sitting in executive session on 27 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 the 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 6 May 2022. You were provided with an opportunity to respond to the AO, but chose not to 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.

During your enlistment processing you disclosed marijuana use and signed a drug and alcohol abuse statement of understanding and acknowledgement. You enlisted in the Navy and began a

period of active duty on 11 June 1985. On 14 June 1985, you were briefed on the Navy's drug and alcohol abuse policy. On 21 November 1986, you received your first nonjudicial punishment (NJP) for wrongful use and possession of marijuana. You were subsequently issued an administrative counseling documenting the aforementioned infraction yet retaining you in the Navy. This counseling further advised you that further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 25 November 1986, you were screened by the Drug and Alcohol Program Advisor (DAPA) who determined you were not drug dependent and were placed in a Level I rehabilitation treatment program. On 20 January 1987, you received a second NJP for the wrongful use of marijuana. As a result, on 26 January 1987, you were notified of your Commanding Officer's (CO) intent to recommend you be discharged with an Other Than Honorable (OTH) characterization of service by reason of misconduct, drug abuse for which you waived your right to consult with counsel and to have your case heard before an administrative separation board (ADB). On 29 March 1987, your CO's recommendation was forwarded to the separation authority for approval. On 10 March 1987, the separation authority concurred with your CO and directed you be separated with an OTH by reason of misconduct, drug abuse and, on 13 March 1987, you were so discharged.

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: (1) you desire a discharge upgrade in order to acquire mental health services, (2) you have experienced bouts of depression since entering the Navy, and (3) during the time of your service you had never been away from your family and began experiencing depression and PTSD due to wartime and things that were occurring around you. For purposes of clemency consideration, the Board noted you provided an advocacy letter but no supporting documentation describing post-service accomplishments.

Based on your assertion that you incurred PTSD and other mental health concerns during military service, which might have mitigated your discharge character of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with the AO. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided limited evidence of a mental health condition, with no diagnosis. Unfortunately, the Petitioner's personal statement and provided records are not sufficiently detailed to establish a clinical diagnosis or provide 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) would aid in rendering an alternate opinion.

The AO concluded, “[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to PTSD or another mental health condition.”

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included two separate drug offenses. Further, the Board noted you were offered Level I rehabilitation treatment after your first drug related offense and continued your drug use. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans’ benefits, or enhancing educational or employment opportunities. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct may be attributed to PTSD or another mental health condition. 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. The Board considered the additional evidence you submitted regarding post-discharge participation in Transition-in-Place program but concluded that the favorable matters you submitted for consideration were also insufficient to outweigh the severity and nature of your misconduct. 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 the 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,

7/23/2022

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Executive Director

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