





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


Docket No: 1316-22
Ref: Signature Date


Dear :

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 10 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health provider, which was previously provided to you. You were afforded an opportunity to submit a rebuttal, but did not.

In your Record of Military Processing from 9 March 1992, you outlined four minor traffic offenses, to include speeding, disregarding a stop sign, and failure to yield right of way, as well as a non-minor misdemeanor of theft by taking. In your National Agency Questionnaire of 9 March 1992, you responded “yes” to having ever tried, used, or possessed any controlled substance without a valid prescription. Likewise, in your Report of Medical History during your initial enlistment physical, on 10 March 1992, you admitted to limited pre-service use of marijuana. You subsequently began a period of active service in the Navy on 4 November 1992. You served without incident for almost 3 years, maintaining a performance trait average of 3.86,

before absenting yourself without authority from 19 July 1995 – 22 August 1995 and, upon surrendering, went absent again from 26 – 28 August 1995 after your urinalysis screening tested positive for marijuana use. You subsequently received nonjudicial punishment (NJP) for two specifications of Article 86, unauthorized absence, and Article 112a, wrongful use of marijuana. Your command notified you of processing for administrative separation for misconduct due to drug abuse and commission of a serious offense, upon which you elected to waive your rights to consult legal counsel and to request an administrative hearing. You were subsequently discharged, on 29 October 1995, under Other Than Honorable (OTH) conditions.

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 your contentions that you were offered the opportunity to continue serving after your misconduct but declined due to suffering from mental health issues. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Because you contend a mental health condition, the Board also considered the AO, which noted in pertinent part:

Among available records, there is no evidence of a mental health diagnosis in military service. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Unfortunately, he has provided no medical evidence in support of his claims. His personal statement is insufficient to establish clinical diagnosis or a nexus with his misconduct. Additional records (e.g., service medical records describing the Petitioner's diagnosis and symptoms in service, or records detailing 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 diagnosis of PTSD that may be attributed to military service. There is insufficient evidence of another mental health condition that could be attributed to military service. There is insufficient evidence that his misconduct could 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 NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct, the fact it included a drug offense, and that you entered the Navy with a drug waiver. In addition, the Board concurred with the AO that there is insufficient evidence that your misconduct could 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. 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, the Board determined that your request does not warrant 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 is attached 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,

6/14/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]