



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: 1341-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 20 May 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 to 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 to the AO, but did not.

You enlisted in the Navy and began a period of active service on 10 July 1978; you served honorably and reenlisted on 26 May 1981 then again on 3 March 1987. At the time of your second reenlistment, your administrative remarks include an entry certifying that you had no disqualifying physical or mental abnormalities. An entry in your medical record, on 31 March 1987, documents that your original medical records were lost. On 3 April 1989, after more than a decade of service, your drug screening urinalysis returned a positive result for marijuana metabolites. Although your 18 April 1989 nonjudicial punishment (NJP) specified only a single charge of Article 112a for wrongful use of a controlled substance, the recommendation for

separation from your commanding officer indicates that you had a subsequent positive urinalysis for cocaine on 10 April 1989, consistent with your drug dependency screening for both specific controlled substances. Of note, this screening indicates that you had no recollection of illegal drug use but had experienced episodes of binge drinking which resulted in loss of memory and during which your drug use may have occurred. Your notification of administrative separation processing for misconduct due to drug abuse specified that you could potentially receive an Other Than Honorable (OTH) discharge; however, after consultation with legal counsel, you elected to waive your right to a hearing before an administrative separation board and, instead, submit a statement. Citing your excellent history of performance, your commanding officer recommended your separation with a General (Under Honorable Conditions) characterization of service; however, Commander, Naval Personnel Command, directed your separation with an OTH characterization of service.

In a 2004 request to the Naval Discharge Review Board, you submitted substantially similar contentions and described that you were as awestruck as anyone by your positive urinalysis, that you believe you were made an example of the Navy's zero tolerance policy, that you were unaware of the additional narcotics allegation until in front of your commanding officer for NJP, and that you continue to deny knowing and intentional wrongful use of illegal drugs. The NDRB denied your request for an upgrade on 3 March 2004.

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, your two prior Honorable discharges, your history of above average performance, and your contentions of suffering undiagnosed bipolar disorder as well as post-traumatic stress disorder (PTSD), with post-discharged diagnoses documented in your treatment records from the Department of Veterans Affairs (VA). 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 the available records, there is no evidence that he 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. Post-service, the VA has provided treatment for PTSD and bipolar disorder. Unfortunately, the Petitioner's personal statement and the VA records are not sufficiently detailed to establish a connection with military service or provide a nexus with his misconduct. The evidence is temporally remote from his military service behavior, and it is difficult to consider that he was experiencing impairing symptoms from PTSD or another mental health condition, given his relatively lengthy and successful military career prior to his 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 diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to PTSD or another mental health condition.”

After a thorough review of available evidence, the Board concluded the potentially mitigating factors you submitted for consideration were insufficient to outweigh the misconduct evidenced by your NJP and two positive urinalysis results for abuse of controlled substances. In making this finding, the Board considered the seriousness of your misconduct and the fact it included multiple drug offenses. 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,

6/9/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]