



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: 1397-22
Ref: Signature Date



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). A three-member panel of the Board, sitting in executive session, considered your application on 1 April 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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.

You enlisted and began a period of active duty in the Navy on 17 May 1967. On 25 September 1967, you were convicted by special court martial (SPCM) for wrongful possession of 2.194 grams of marijuana in violation of Article 134, Uniform Code of Military Justice. You were sentenced to forfeiture of \$60 per month for six months, confinement at hard labor for six months, and to be discharged from the service with a bad conduct discharge (BCD). During the proceedings, the military judge denied a speedy trial motion submitted by your defense counsel. You had been placed on restriction for 69 days prior to your trial. On 8 November 1967, the staff legal officer reviewed your case and found the government had failed to sustain its burden to show the delay was

not due to a purposeful or oppressive design or to a lack of reasonable diligence. The staff legal officer recommended that the findings and sentence be disapproved and the charge dismissed. As a result, the Convening Authority suspended the BCD and you were returned to active duty. On 9 September 1968 and 7 March 1969, you underwent psychiatric evaluations and were diagnosed with Passive Aggressive Personality that existed prior to your enlistment. On 21 May 1969, you were notified of administrative separation processing by reason of unsuitability based on your diagnoses. Your commanding officer recommended you receive a characterization of service as warranted by your service record and you were discharged, on 13 June 1969, with a General (Under Honorable Conditions) characterization of service.

You contend that you suffered from mental health conditions while in-service and these conditions caused your misconduct. You state that the behavior that made you “unsuitable” is directly related to your service connected mental health. You contend that your inability to get along with others or to follow orders is directly linked to your service connected disabilities.

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 contentions noted above and desire to upgrade your discharge. The Board also considered the AO in making its determination. The AO noted that post-service, the Department of Veterans Affairs awarded you service connection for Dysthymic Disorder and it is possible that some of your behaviors that were diagnosed as a personality disorder during service could be attributed to Dysthymic Disorder. The AO concluded that there was post-service evidence of a mental health condition that may be attributed to military service and that your behavior which resulted in separation could be attributed to a mental health condition (Dysthymic Disorder). The Board concurred in part with the AO; however, based on the amount of marijuana found in your possession, found that the misconduct outweighed the condition. The Board also noted that your SPCM conviction was for drug possession and not connected to your assertion that your characterization of service is somehow connected to your inability to get along with others or to follow orders. Furthermore, you were given the opportunity to continue on active duty after you were sentenced to a BCD and the Board determined that your General (Under Honorable Conditions) characterization of service is appropriate and in accordance with your trait averages. Based upon this review, the Board concluded that the potentially mitigating factors in your case were insufficient to warrant relief. Specifically, the Board determined that the seriousness of your misconduct, as evidenced by your SPCM, outweighed these mitigating factors. 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 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,

4/27/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]