



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: 1598-22
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). A three-member panel of the Board, sitting in executive session, considered your application on 27 July 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 the advisory opinion (AO) furnished by a qualified mental health professional dated 29 May 2022, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you did not do so.

You enlisted in the Navy Reserve, and began a period of active duty for training on 17 December 1984. On 8 January 1985, you were issued an administrative remark (Page 13) and in that Page 13 you acknowledged the negative influence of drug involvement. On 17 May 1985, you completed your period of active duty for training, received an Honorable characterization, and subsequently continued your reserve enlistment.

On 14 December 1986, you participated in a command directed urinalysis because of a period of unauthorized absence. Subsequently, your sample tested positive for marijuana. As a result, you

were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to drug abuse, at which time you waived your procedural rights to consult with military counsel and to present your case to an administrative discharge board (ADB), however, you elected to submit a statement on your behalf. Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an Honorable characterization of service. The SA approved the recommendation for administrative discharge and directed your discharge from the Navy with a characterization warranted by service record. On 19 March 1987, as an E-3, you were discharged from the Navy by reason of misconduct due to drug abuse with an Honorable characterization of service.

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 character of service, change your narrative reason for separation, and restore you to the paygrade of E-3. The Board also considered your contentions that you are dealing with traumatic brain injury (TBI) and this diagnosis might have mitigated your substandard performance or inability to adapt to military service that led to your "Dishonorable" characterization of service. Additionally, the Board considered your assertion that you were injured in a tackle football game and suffered a severe bone sprain of your left shoulder after being driven into the ground head first. Finally, the Board noted your desire for Department of Veterans Affairs (VA) benefits. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 29 May 2022. The AO noted in pertinent part:

Petitioner's available in-service personnel and medical records did not contain a diagnosis of TBI, nor did it contain a record of psychological symptoms or behavioral changes indicative of a diagnosable mental health condition or of behaviors attributable to a TBI. Throughout his counselings, disciplinary, and administrative processing, there were no concerns raised of any issues warranting any additional referral to mental health resources. Post-discharge, Petitioner did provide clinical evidence of a diagnosis of TBI attributable to his military service. There was no evidence in Petitioner's available in-service or post-discharge clinical records of TBI or residual symptoms of TBI. Though Petitioner indicated on his application that TBI was an issue/condition related to his request, there were no in-service or post-discharge clinical records provided with a diagnosis of TBI or related conditions, nor clinical evidence to establish a nexus between his in-service misconduct and his contended TBI condition. In his separation physical examination, Petitioner denied any history of head trauma or mental health symptoms or conditions and described his health at the time of his discharge as "good." Additional information, such as post-service treatment records supporting Petitioner's contention of a TBI condition and its specific link to his misconduct, would assist in the review of his application for relief. Should

the Petitioner choose to submit additional records, they will be reviewed in context of his claims.

The AO concluded, “[b]ased on the available evidence, it is my clinical opinion that the preponderance of evidence does not support Petitioner’s contention he incurred a TBI attributable to his military service. There is insufficient evidence to support Petitioner’s contention that his in-service misconduct could be attributed to a TBI.”

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your positive urinalysis, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug offense. Additionally, the Board found no evidence to support a finding that any error or injustice exists with your positive urinalysis. Thus, the Board determined you were appropriately separated from the Navy Reserve for drug abuse. Finally, the Board concurred with the AO that the preponderance of evidence does not support your contention that you incurred a TBI attributable to your military service, and there is insufficient evidence to support your contention that your in-service misconduct could be attributed to a TBI. As a result, after applying liberal consideration, the Board did not find evidence of an error or injustice that warrants changing your narrative reason for separation or granting clemency in your case. Accordingly, given the totality of the circumstances, the Board determined your request does not merit relief.

The Board noted that you requested an upgrade to your characterization of service and reinstatement of paygrade E-3 as part of your application. However, as previously discussed, your record documents that you were honorably discharged from the Navy Reserve in the paygrade of E-3. Therefore, the Board concluded neither of the requests required any action. Therefore, while the Board does not have any authority to determine VA benefits eligibility, based on your characterization of service, they believed you are likely eligible for benefits and should apply through your nearest VA office.

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,

8/10/2022

