



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

█
Docket No: 1628-22
Ref: Signature Date

█
█
█

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 the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 30 March 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).

You enlisted in the Navy and began a period of active duty on 26 September 1978. On 23 March 1979, you were diagnosed with an Immature Personality, that existed prior to your entry onto active duty, and Poly Drug Abuse by history. On 26 July 1979, you received nonjudicial punishment (NJP) for wrongful possession and use of marijuana. On 16 January 1980, you were convicted by special court-martial (SPCM) of being absent from your appointed place of duty, failure to obey an order, possession of marijuana, and urinating on the deck and bulkhead. You were sentenced to a period of confinement at hard labor, a forfeiture of pay, and a reduction in paygrade. On 8 February 1980, you received NJP for escaping from a Correctional Custody Unit, and possession of marijuana. On 7 March 1980, you were not granted a Drug Exemption. It was determined that there was no evidence of drug use, and no treatment was required. Additionally, you were notified of administrative discharge action for misconduct by reason of

drug abuse and frequent involvement with military authorities. After being afforded your procedural rights, you elect to have your case heard before an administrative discharge board (ADB). On 13 March 1980, you signed a Memorandum of Agreement between you and the Commanding Officer (CO) to waive your ADB, and to accept a general discharge. However, on 11 May 1980, the separation authority did not concur with the recommendation for a general discharge and directed you complete another statement of awareness. On 29 May 1980, your case was forward with the recommendation that you be discharge due to unsuitability. On 9 September 1980, the separation authority directed that you receive and OTH discharge due to misconduct. However, the execution of the discharge was held in abeyance pending further observation of your conduct. On 22 December 1980, your CO submitted a request to expeditiously vacate your probation and execute your discharge, after you were awarded NJP for three specifications of UA, two specifications of disobedience and 12 specifications of missing muster and breaking restriction. On 29 December 1980, the separation authority directed you receive an OTH discharge due to drug abuse and frequent involvement. On 31 December 1980, you were discharged from the Navy with an OTH 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 statement that you are an alcoholic and was drunk at the time you requested to be sent home. You state that you have not had a drink since July 2021, are an upstanding American citizen who attends AA meetings every day, has no criminal record, and has a sponsor who you call every day. 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 three NJPs and SPCM conviction, outweighed these mitigating factors. In making this finding, the Board took into consideration that your misconduct involved drug abuse and that you were already provided an opportunity to mitigate your discharge from the Navy during a probationary period; an opportunity you chose to squander through continued serious misconduct. 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,

4/3/2022

█
Executive Director
█