



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: 1795-22
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 17 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 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) of a qualified mental health provider, which was previously provided to you. You were afforded an opportunity to submit a rebuttal, but did not do so.

You enlisted in the Marine Corps and began a period of active service on 14 February 1995. In November 1996, you were counseled on not being recommended for promotion due to poor judgment, immaturity, and lack of leadership. You received nonjudicial punishment (NJP), on 12 February 1997, for willfully disobeying a lawful order and using disrespectful language. Although you appealed your NJP, the appeal was denied on 6 March 1997. A drug lab message reported your urinalysis positive for marijuana metabolites in October 1998. Pursuant to the terms of your pre-trial agreement (PTA), you plead guilty at Special Court-Martial (SPCM) to violations of Article 92, for violating a lawful general order, and Article 112a, for two specifications of wrongful use of marijuana. Based on your misconduct, you were subsequently

notified of processing for administrative separation by reason of misconduct due to drug abuse and waived your hearing. Your separation was approved by the Commanding General, ██████████ Marine Aircraft Wing, and you were discharged, on 5 March 1999, with a General (Under Honorable Conditions) 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 and reinstate your rank and lost pay, as well as your contentions that you suffer service-connected post-traumatic stress disorder (PTSD) due to being a victim of a violent physical assault and hazing from other service members in the summer of 1996. The Board noted your detailed description of this traumatic incident and your assertion that you ultimately were discharged for marijuana as a result of PTSD. 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. Post-service, the VA has determined service connection for PTSD. Unfortunately, his personal statement and provided records are insufficiently detailed to establish a nexus with his misconduct, particularly given pre-service marijuana use. 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 post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to PTSD.”

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 and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. Further, the Board concurred with the AO that there was insufficient evidence that your misconduct could be attributed to your post-service diagnosis of PTSD. The Board noted that the serious nature of your misconduct would normally result in administrative discharge under Other Than Honorable conditions or a punitive discharge at court-martial; however, the Board observed that you were not adjudged a punitive discharge and that you were administratively discharged with a General (Under Honorable Conditions). As a result, the Board found that your discharge equitably accounted for substantial mitigating and extenuating circumstances presented for consideration at the time of your court-martial and discharge proceedings. As a result, the Board concluded that significant negative aspects of your service outweigh the positive aspects and continues to warrant a General (Under Honorable Conditions) 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.

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,

7/5/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]