



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: 1915-22
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 11 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 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 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). As part of the Boards review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 16 May 2022. You were provided an opportunity to respond to the AO, but chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Navy and began a period of active duty on 8 February 1965. On 13 October 1965, you received your first nonjudicial punishment (NJP) for two specifications of violating regulations by the unauthorized use of a uniform item while in civilian attire and drinking as a minor. On 12 May 1966, you were found guilty in the Municipal Court of █ for hit and run/property damage and sentenced to pay a \$156.00 fine for which \$100.00 were suspended for a year. On 5 October 1966, you received a second NJP for being in an unauthorized absence for a total of three days. Despite the aforementioned misconduct, you were advanced to E-4 on 16 October 1966. On 1 March 1967, you were notified of your Commanding Officer's (CO) intent to recommend to the separation authority that you be discharged with a General (Under Honorable Conditions) (GEN) characterization of service by reason of civil conviction for which you elected your right to consult with counsel and to have your case heard before an administrative separation board (ADB). On 30 March 1967, the ADB recommended you be discharged with a GEN characterization of service. While your CO agreed with the ADB, he recommended that you be placed on probation for a period of one year and be awarded a GEN discharge in the event that you are involved with civil or military authorities, "or any other violation tantamount to moral turpitude." In June 1967, the separation authority agreed with your CO and directed your discharge be held in abeyance for 12 months, allowing you to continue your military service.

On 5 June 1967, you received another NJP for failure to obey an order from a Petty Officer and having alcohol onboard a ship. On 1 October 1968, you signed a permissive search authorization for investigation into alleged offenses of the possession and use of narcotics – marijuana. On 8 October 1968, evidence collected from said authorization tested positive for opium and cannabis. On 27 November 1968, you received a third NJP for failure to obey a lawful regulation and conduct to the prejudice of good order and discipline. On 4 December 1968, you were notified a second time of your CO's intent to recommend to the separation authority that you be discharged, this time with an Other Than Honorable (OTH) characterization by reason of unauthorized possession of marijuana and opium, at which time you waived your right to have your case heard before an ADB. On 11 December 1968, the separation authority agreed with your CO and directed you be discharged with an OTH. On 16 December 1968, you were so discharged.

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 contentions: "[d]espite what happened or the cause of the discharge, I feel that I've served my time overseas which makes me a Veteran. I further believe as noted on my DD 214 and more importantly a Combat █ Veteran (1 Bronze Star). I further believe medically speaking per the Navy doctor; PTSD, Chronic Depression and Chronic Anxiety." For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Based on your assertion that you incurred PTSD and other mental health concerns during military service, which might have mitigated your discharge character of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with the AO. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence to support his claims. Unfortunately, his personal statement is not sufficiently detailed to establish a clinical diagnosis or provide a nexus with his misconduct. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, “[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to PTSD or another mental health condition.”

Based on 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 NJPs, civil conviction, and wrongful possession of drugs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board considered that you were provided an opportunity to correct your conduct deficiencies after your first administrative separation was suspended. This led the Board to conclude you were already afforded a large measure of clemency by the Navy. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct may be attributed to PTSD or another mental health condition. 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, 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 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 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, _____

7/25/2022

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Executive Director

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