



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

██████████
Docket No. 2527-22
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 22 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 SECDEF Memo of 3 September 2014 (Hagel Memo), USD Memo of 25 August 2017 (Kurta Memo), and USD Memo of 25 July 2018 (Wilkie Memo). The Board also considered the advisory opinion (AO) of a qualified mental health provider dated 8 June 2022 and your response to the AO.

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 Marine Corps and began a period of active duty, on 3 February 2000, after receiving a waiver for pre-service marijuana use. In October of 2000, you were counseled for six periods of unauthorized absence (UA) spanning from 25 September 2000 through 3 October 2000 which all occurring between the hours of 0530 – 0600. You received nonjudicial punishment (NJP), on 6 June 2001, for an Article 92 orders violation after willfully supplying alcohol to a minor. You received a second NJP, on 12 December 2001, for violating Article

112a by wrongful use of marijuana. Subsequently, you were notified of processing for administrative separation by reason of misconduct due to drug abuse. Although your substance abuse screening did not extend a formal diagnosis, your commanding officer's recommending for your separation under Other Than Honorable (OTH) conditions asserted that your poor performance, pattern of misconduct, and "mental condition" rendered you unsuitable for continued service. The recommendation for your separation was forwarded for legal review; and, following approval by the Commanding Officer, ██████████, you were discharged on 17 January 2002.

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 your contentions regarding racism, maltreatment, and an extensive series of incidents between you and a senior enlisted member of your command which you attribute as retribution. The Board also considered your chronology of events contained in your lengthy statement. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Because you contend that post-traumatic stress disorder (PTSD) or another mental health (MH) disorder affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

There is no evidence Petitioner was diagnosed with a mental health condition during his service. He did not provide medical records to support his contention of a diagnosis of PTSD or another MHC. Petitioner provided a personal statement describing his perceived treatment during military service, which provided alternative reasoning for his misconduct. He also explained he made a false statement about his marijuana in order to be released from his obligation and to prevent going to the brig, which does not appear to be related to a mental health condition. Petitioner's personal statement provided alternative reasoning for his misconduct. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms) would aid in rendering an alternate opinion.

The AO concluded, "[b]ased on the available evidence, it is my considered clinical opinion, there is insufficient evidence of PTSD or another MHC that can be attributed to military service, or that his in-service misconduct could be attributed to PTSD or another MHC."

In response to the AO, you provided a personal statement disagreeing with the conclusions of the AO and providing additional clarifying information regarding the circumstances of your case.

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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact your misconduct included a drug

