



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: 3349-22
Ref: Signature Date



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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. Your current request has been carefully examined by a three-member panel of the Board, sitting in executive session on 25 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 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) 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 Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 27 May 2022. You were provided an opportunity to respond to the AO, but chose not to do so.

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. There included, but were not limited to, your desire to upgrade your discharge and contentions that you were experiencing significant distress due to personal stressors associated with your family and saw no other way to exit the military than the route taken in order to be able to take care of your family. Further, you asserted your military service was outstanding up until your discharge. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

Based on evidence that you incurred a mental health condition as a result of military service and the condition might have mitigated your discharge character of service, a qualified mental health professional 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 during military service. Post-service, the VA (Department of Veterans Affairs) has determined service connection for GAD (Generalized Anxiety Disorder) incurred during his first period of service. While it is possible that marijuana use could be attributed to self-medication for unrecognized anxiety symptoms, it is difficult to make this determination, given his statements in service that his use was a premeditated effort to obtain discharge despite other possible options. Additional records (e.g., complete VA 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 post-service evidence of a diagnosis of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition.”

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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. Additionally, while the Board noted your record of performance outside of your drug abuse, they concluded your incident of misconduct was sufficiently serious to merit the Other Than Honorable (OTH) characterization of service you were assigned, regardless of your otherwise good service. As part of their deliberations, the Board also took into consideration that you committed the drug abuse in order to escape your military commitment and already have two other periods of honorable service on which to qualify for veterans' benefits. Finally, the Board concurred with the AO that there is insufficient that your misconduct could be attributed to a 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 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,

8/9/2022

