



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: 4024-22
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.

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 22 August 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 this 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). 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 13 June 2022. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 6 July 1989. On 9 July 1989, you were briefed on the Navy's drug and alcohol abuse policy. On 21 January 1992, you were briefed on the commanding officer's (CO) policies regarding several topics to include drug and alcohol abuse. On 7 June 1993, you reenlisted and began another period of active duty. On 7 June 1995, you received nonjudicial punishment (NJP) for the wrongful use of marijuana. On 16 June 1995, you were notified of your CO's intent to recommend to the separation authority that you be discharge by reason of drug abuse, at which time you elected your right to consult with military

counsel and have your case heard before an administrative discharge board. On 18 July 1995, an administrative board was held and found, by a vote of 3-0, you committed misconduct and should be discharged with a General (Under Honorable Conditions) (GEN) characterization of service. On 5 September 1995, the separation authority directed you be discharged by misconduct with a GEN discharge and, on 8 September 1995, you were so discharged.

On 12 May 1997, the Naval Discharge Review Board (NDRB) denied your request for a discharge upgrade after concluding your discharge was proper as issued.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrants relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge characterization and your contentions that, (1) you incurred PTSD during military service, (2) you were unaware and undiagnosed for your mental health condition, (3) you feel if you would have been properly diagnosed you would not have been discharged with a "lesser grade condition," and (4) as a result of your discharge you were ineligible for the Troops to Teachers Program. For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments but no advocacy letters.

Based on your assertion that you incurred PTSD, 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. There is no evidence he was unaware of his misconduct or not responsible for his actions. Post-service, the VA has determined disability compensation for PTSD. Unfortunately, his personal statement and the available records are insufficient to establish a nexus with his misconduct, particularly as in-service statements indicate that his misconduct was due to poor coping rather than another PTSD avoidance symptom. 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 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 drug use, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved drug abuse. The Board determined that illegal drug use by a Sailor is contrary to Navy core values and policy, renders such Sailors unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. Additionally, absent a material error or injustice, the Board declined to summarily

upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD. As a result, the Board concluded that significant negative aspects of your second enlistment period outweighed the positive aspects and continue to warrant a GEN characterization of service. While the Board commends your post-discharge accomplishments, 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,

9/9/2022

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Executive Director

Signed by: █