



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: 4125-22
Ref: Signature Date

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Dear █

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.

A three-member panel of the Board, sitting in executive session, considered your application on 5 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 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). Additionally, the Board also considered advisory opinion (AO) furnished by a qualified mental health provider. Although you were afforded an opportunity to submit an AO rebuttal, and you did not 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 originally enlisted in the Navy and entered active duty on 18 January 2011. Your pre-enlistment physical examination, on 7 May 2010, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 12 July 2019, you reenlisted for four years.

In April 2020, you were diagnosed with cannabis dependence, and alcohol dependence. Unfortunately, the administrative separation documents are not in your record. However, the Board relied on a presumption of regularity to support the official actions of public officers, and given the narrative reason for separation and corresponding separation and reentry codes as stated on your Certificate of Release or Discharge from Active Duty (DD Form 214), the Board presumed that you were properly processed and discharged from the Navy for drug abuse. In blocks 25 through 28 of your DD Form 214 it states “MILPERSMAN 1910-146,” “GKK,” “RE-4,” and “Misconduct – Drug Abuse,” respectively. Such DD Form 214 notations collectively refer to a discharge following an administrative separation board hearing for drug abuse. Ultimately, on 28 May 2020, you were separated from the Navy for misconduct with a General (Under Honorable Conditions) (GEN) discharge characterization and assigned an RE-4 reentry code.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire for a change to your reentry code and contentions that: (a) your discharge after nine years of service followed your voluntary self-referral to get help for your substance abuse problem, (b) you were not disciplined, not subjected to non-judicial punishment, and did not lose any rank, (c) prior to your discharge you maintained a high level of performance, (d) for the past two years you have been working for the Navy as a civilian and maintaining your security clearance, (e) you are still fit for full duty and can perform at a high level, and (f) your discharge was only to seek help, and did not reflect poor performance. For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments but no advocacy letters.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 14 June 2022. The Ph.D. stated in pertinent part:

Petitioner has provided evidence of diagnoses of alcohol use disorder (AUD) and substance use disorder (SUD) during military service. Substance use is incompatible with military readiness and discipline and considered amenable to treatment, depending on the individual’s willingness to engage in treatment. There is no evidence that the Petitioner was unaware of his misconduct or was not responsible for his behavior. Although he has provided evidence of post-service completion of successful treatment for SUD, stressors in military life are different from stressors as a civilian. There is insufficient evidence that the unique stressors of military life would not trigger a relapse. There is insufficient evidence that comprehensive evaluation prior to re-enlistment, such as would be required to obtain a waiver for entry to military service, was not warranted.

The Ph.D. concluded, “[b]ased on the available evidence, it is my clinical opinion that there is evidence of a diagnosis of mental health condition experienced during military service. There is insufficient evidence that the diagnosis was assigned in error.”

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 cannabis dependence, 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, in accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade or change in reentry code. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under GEN or OTH conditions and RE-4 reentry codes are generally warranted for misconduct and appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The Board determined that the record clearly reflected your misconduct was intentional and indicated you were unfit for further service. Moreover, the Board concurred with the AO and concluded that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge or reentry code to be automatically upgraded after a specified number of months or years. Lastly, absent a material error or injustice, the Board declined to summarily upgrade a discharge or reentry code solely for the purpose of facilitating veterans benefits, or enhancing educational or employment opportunities, including military enlistments. As a result, the Board determined that there was no impropriety or inequity in your discharge and reentry code, and even under the liberal consideration standard, the Board concluded that your drug-related conduct clearly merited your receipt of a GEN with an RE-4 reentry code. While the Board commends you post-discharge recovery and good character, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that insufficient evidence of error or injustice exists to warrants changing your reentry code or granting clemency in your case. 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,

8/13/2022



Executive Director

Signed by: 