



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: 4758-22

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 26 October 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional and your response to the AO.

You enlisted in the Navy and began a period of active duty on 20 March 1995. On 2 December 1995, civilian medical authorities treated you for an "apparent" substance abuse related incident. On 4 December 1995, you consented to provide a urine sample for testing. The Navy Drug Laboratory, ■■■■■■■■■■, tested your urine sample and notified your commanding officer (CO) that the provided sample tested positive for marijuana. On 15 December 1995, you received non-judicial punishment (NJP) for wrongful use of marijuana and disorderly conduct, which conduct was of a nature to bring discredit upon the armed forces. Based on your misconduct, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to drug abuse. You were advised of, and waived

your procedural rights to consult with military counsel and to present your case to an administrative discharge board (ADB). On 5 January 1996, you received your second NJP for absence from your appointed place of duty and wrongfully consuming alcoholic beverages while on restriction. On 26 January 1996, you were evaluated and diagnosed by a medical officer as alcohol/drug dependent. You were afforded the opportunity for Level III rehabilitation treatment. However, you elected not to participate in the program. Your CO then forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed your OTH discharge from the Navy. On 22 March 1996, you were discharged from the Navy with an OTH characterization of service by reason of misconduct due to drug abuse.

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 to change your discharge character of service to “uncharacterized / entry level separation” or upgrade your discharge character of service to Honorable and contentions that a correction should be made to correctly characterize your service record, you recently have been diagnosed with autistic disorder; you have previously been diagnosed with paranoia, bipolar I disorder with moderate mania, generalized anxiety disorder, schizoaffective disorder, attention disturbance, and you have been on disability since 2014. You further assert that after your discharge from the Navy, you struggled to maintain employment due to your mental illnesses, you received treatment from alcohol anonymous, and despite continued failures at every job and relationship, you have not needed the relief from alcohol or drugs. For purposes of clemency consideration, the Board noted you provide advocacy letters and supporting documentation describing post-service accomplishments.

As part of the Board’s review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 8 September 2022. The AO noted in pertinent part:

During military service, he was diagnosed with a substance use disorder and declined treatment. Substance use is incompatible with military readiness and discipline, and the evidence indicates he was aware of his misconduct and deemed responsible for his behavior. Post-service, he has provided no medical evidence of a diagnosis of PTSD, but evidence of several other mental health conditions. A civilian provider has opined that the Petitioner was experiencing undiagnosed Schizoaffective Disorder during military service, which contributed to his misconduct. However, this diagnosis is temporally remote to military service and there is insufficient information regarding the associated symptoms of this diagnosis or their potential nexus with his misconduct. Regarding Autism Spectrum Disorder (ASD), the 5th Diagnostic and Statistical Manual of Mental Disorders, Edition (DSM-V) notes, “symptoms must be present in the early developmental period (but may not become fully manifest until social demands exceed limited capabilities).” ASD would have been present, if undiagnosed, during military service. It is possible that the Petitioner’s disorderly conduct and behavior at the

beach party could be attributed to a ASD, as his ability to navigate social nuance was likely impaired. However, it is more difficult to attribute his misconduct while on restriction to ASD or another mental health condition, as his statements at the time indicated a knowledge of his misconduct, and a decision to engage despite restriction. 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, "it is my considered clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is post-service evidence of other mental health conditions (Schizoaffective Disorder and ASD) that may have been undiagnosed during military service. There is insufficient evidence that all of his misconduct could be attributed to a mental health condition."

In response to the AO, you provided a rebuttal statement that supplied additional clarification of the circumstances of your case. The Board also noted you provided additional documents in support of your application.

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your two NJPs, outweighed these mitigating factors. In making this finding, the Board considered the brevity of your service, the seriousness of your misconduct, and the fact it involved a drug offense. 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. The Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Further, the Board considered the likely negative effect your misconduct had on the good order and discipline of your command. Finally, the Board concurred with the AO and determined that while there is post-service evidence of other mental health conditions (Schizoaffective Disorder and ASD) that may have been undiagnosed during military service, there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service or that all of your misconduct could be attributed to a mental health condition. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. While the Board empathized with your current medical condition and the difficulties you have faced since your discharge, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting an upgraded characterization of service as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board determined 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,

11/9/2022



Executive Director

Signed by: █