



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: 4877-22

Ref: Signature Date



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.

Although you did not file your application in a timely manner, the statute of limitations 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 5 December 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 service 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)/mental health condition (MHC) (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 an advisory opinion (AO) from a qualified mental health professional and your response dated 15 November 2022.

You enlisted in the United States Navy and commenced a period of service on 3 March 1980. On 29 September 1983, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 112(a), for wrongful use of a controlled substance. You did not appeal this NJP.

On 18 April 1984, you were given a mental health evaluation wherein the Psychologist noted that you were "severely depressed and emotionally unstable...under extreme stress at work and

unable to cope with military requirements.” You were diagnosed with Adjustment Disorder with Mixed Disturbance of Emotions and Conduct.

On 21 May 1984, you were evaluated by the Counseling and Assistance Center (CAAC). During this evaluation you reported increasing frequency of marijuana use with no desire to stop. The counselor notes that you did “not desire to continue Naval service because his Navy obligation keeps him from addressing his family problems.”

On 16 May 1984, you again tested positive for marijuana on a routine drug screening. On 18 May 1984, you submitted a statement regarding your intent to use drugs in an effort to get discharged from the service. On 25 May 1984, you received NJP for violation of UCMJ Article 112(a), for wrongful use of a controlled substance. You did not appeal this NJP.

On 29 May 1984, you were notified that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. Ultimately, on 21 June 1984, you were discharged from the Navy for misconduct with an Other than Honorable (OTH) characterization of service and assigned an RE- 4 reenry code.

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire to upgrade your characterization of service and change your narrative reason for separation, (b) your assertion that traumatizing events impacted your mental health, and (c) the impact your mental health had on your conduct. For purposes of clemency and equity consideration, the Board noted you did provide documentation related to your post-service mental health treatment, portions of your service record, character letters, and your post-service accomplishments.

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 4 October 2022. The Ph.D. noted in pertinent part:

During military service, the Petitioner was diagnosed with an adjustment disorder. Post-service, the VA has granted service connection for PTSD. It is possible the symptoms identified as adjustment disorder during military service have been re-conceptualized as PTSD with the passage of time and improved understanding. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, given his substance use history that began prior to military service and continued during military service. Additional records (e.g., complete mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The Ph.D. concluded, “it is my considered clinical opinion there is post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is in-service evidence of another mental health condition (adjustment disorder) that may be attributed to military service.

There is insufficient evidence his misconduct could be attributed to PTSD or another mental health condition."

In response to the AO, you provided additional medical documentation and argument in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board felt that your misconduct, as evidenced by your positive drug tests, outweighed these mitigating factors. 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 the stressful events occurring your life and their possible adverse impact on your service. The Board considered the seriousness of your misconduct and the fact that it involved drug offenses. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that illegal drug use is contrary to the Navy core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of fellow shipmates.

In making this determination, the Board concurred with the advisory opinion that while there is post-service evidence of a PTSD diagnosis and in-service evidence of an adjustment disorder, there is insufficient evidence that your misconduct could be attributed to PTSD or another mental health condition. Even after considering your supplemental evidence, the Board felt that the available records are not sufficiently detailed to establish a nexus between the diagnosis and your misconduct, especially given your substance use history that began prior to military service and continued during military service. The Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. On 18 April 1984, as part of psychological fitness for duty examination, you discuss numerous stressors such as feeling "owned" by the Navy and a recent relationship breakup, but you do not reference any of the trauma that you note in your petition. The treating physician states, "since member is responsible for his behavior, any separation should be handled administratively based on member's misconduct." In weighing your mental responsibility, the Board also relied on your own statement submitted on 18 May 1984. You admit to having used marijuana since you were 10 years old and that you did not quit when you joined the Navy. You state "I've used marijuana as anyone else uses jogging, alcohol, or meditation, with no real feeling that I was wrong." You go on to say "when the urinalysis testing became commonplace I...decided I'd better do something, unfortunately it was not stopping my marijuana usage. Instead I embarked on a campaign to legally void my extension." Once you realized that you could not get out of your contract you explained, "I decided to wait for a urinalysis and be thrown out." Finally, you state that you accept your punishment and are "fully aware of the consequences." The Board concluded that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. 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.

The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Accordingly, even in light of the Wilkie Memo and reviewing the record holistically, the

Board did not find evidence to support a finding of an error, injustice, or clemency that warrants upgrading your characterization of service. While the Board commends your post-discharge accomplishments, 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 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,

12/16/2022

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Executive Director

Signed by: █