



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: 5093-22
Ref: Signature Date

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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 12 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 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 7 November 2022. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the U.S. Navy and began a period of active duty on 16 April 1976. You reenlisted multiple times and completed three periods of honorable service. Your last reenlistment was on 29 September 1983 and you continued your active duty service. On 22 April 1986, an investigation was initiated after your command received information indicating you and another Sailor would return to the ship possessing marijuana. On 8 August 1986, you provided a statement to investigating officials admitting to purchasing marijuana for another Sailor on

multiple occasions and asserting you “never sold it.” On 12 November 1986, you received nonjudicial punishment (NJP) for three specifications of distributing marijuana. On 16 December 1986, you were notified of your pending administrative separation due to misconduct as evidenced by drug abuse, at which time you elected your right to consult with counsel and to present your case before an administrative discharge board (ADB). On 29 January 1987, an ADB was convened and found, by a vote of 3 to 0, you committed misconduct and recommended you be discharged with an Other Than Honorable (OTH) characterization of service. On 17 February 1987, your commanding concurred with the ADB recommendation and forwarded your case to the separation authority (SA). On 9 March 1987, the SA accepted the recommendation and directed you be discharged with an OTH for drug abuse. On 13 March 1987, you were so discharged.

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 upgrade your discharge and contention that you incurred PTSD while on active duty. You also argue that you suffered from reprisals when you refused to inform on marijuana suppliers. For purposes of clemency and equity consideration, the Board noted you provided supporting documentation describing post-service accomplishments and a medical document.

Based on your assertion that you incurred PTSD and other mental health concerns during military service, which might have mitigated your discharge characterization of service, 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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additionally, it is difficult to attribute his misconduct to PTSD, as his statement is that he incurred PTSD from reprisal following failure to inform after his misconduct was discovered.

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 insufficient evidence his misconduct could be attributed to PTSD.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included multiple drug related offenses. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of

their fellow service members. 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 concurred with the AO that there is insufficient evidence of a diagnosis of PTSD that may be attributed to your military service or misconduct. Finally, the Board noted that you provided no evidence to substantiate your allegations of unfair treatment by the Navy. Contrary to your contentions of unfair treatment and reprisal, the Board noted that the Naval Investigative Service investigation included your admission of guilt regarding your drug abuse. 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. While the Board commends your post-discharge good character and empathizes with your current medically related issues, 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.

While the Board ultimately decided your most recent characterization of service remains appropriate in light of your misconduct, the Board noted that your application implies you have been denied Department of Veterans Affairs (VA) medical treatment based on your OTH characterization. The Board has no authority to make eligibility determinations regarding VA health care benefits. However, the Board is aware that service members may qualify for VA benefits based on previous periods of honorable service. As pointed out earlier, your record shows several periods of honorable service that may qualify you VA health care benefits. If you have been denied eligibility by the VA, the Board recommends you appeal that decision by submitting evidence of your previous honorable service to the nearest regional VA office.

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,

1/9/2023

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Executive Director
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