



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: 5096-22

Ref: Signature date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 14 November 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 the 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, 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 dated 26 September 2022, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

On 13 September 1990, you were notified of the initiation on of administrative separation proceedings by reason of medical disqualification from the Delayed Entry Program (DEP). On 9 November 1990, you enlisted in the Navy with a waiver for your discharge from the DEP. On 15 November 1990, you began a period of active duty. On 13 March 1992, you received nonjudicial punishment (NJP) for wrongful use of a controlled substance. On 8 May 1992, you began a period of unauthorized absence (UA) which lasted eight days and resulted on you missing ship's movement on 13 May 1992. On 22 May 1992, you received a second NJP for a period of

UA and missing ship's movement. On 27 March 1992, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to commission of a serious offense and drug abuse, at which point, you decided to waive your rights. On the same date, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to drug abuse. On 8 June 1992, the separation authority approved and ordered an OTH discharge characterization by reason of misconduct due to commission of a serious offense. On 16 June 1992, you were discharged.

Post-discharge, you applied for a discharge upgrade to the Naval Discharge Review Board (NDRB). The NDRB denied your request on 9 December 1996 after determining your discharge was proper as issued.

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 discharge upgrade and contentions that you were diagnosed with Post Traumatic Stress Disorder (PTSD), you used marijuana and alcohol to self-medicate, and that marijuana is now legal in many jurisdictions. For purposes of clemency and equity consideration, the Board noted you did submitted a copy of your Department of Veterans Affairs rating decision letter and other relevant portions of your OMPF records.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

During military service, the Petitioner was evaluated and deemed not substance dependent. There is no evidence that he was diagnosed with another mental health condition during military service, or that he exhibited any psychological symptoms or behavioral changes indicative of another diagnosable mental health condition. Post-service, the VA has determined service connection for PTSD that is temporally remote to his military service. Unfortunately, his personal statement and available records are not sufficiently detailed to establish a nexus with his misconduct, particularly given his use of marijuana upon entry into active duty. Additional records (e.g., 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 clinical opinion there is post-service 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 your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included 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. Additionally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. 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 the 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,

12/6/2022

