



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: 5192-22
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 24 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, 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 reviewed an advisory opinion (AO) from a qualified mental health professional and your response to the AO.

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 enlisted in the U.S. Navy and commenced a period of active duty on 7 July 1998. On 23 November 1998, you were diagnosed with personality disorder, not otherwise specified (borderline, immature) and recommended you be discharged with an Entry Level Separation

(ELS) due to unsuitability. However, you were determined not to be mentally ill and therefore considered fit for full duty.

On 17 February 1999, you were found guilty at a summary court-martial (SCM) for a period of unauthorized absence that lasted 71 days until you were apprehended and for missing movement through design. You were sentenced to be confined for 30 days and to forfeit \$639.00 pay per month for one month. On 27 April 2000, you received nonjudicial punishment (NJP) for the wrongful use of marijuana. On 3 May 2000, you were diagnosed as not drug/alcohol dependent. On 11 May 2000, you were notified of your pending administrative separation due to drug abuse and a commission of a serious offense (COSO), at which time you waived your right to consult with military counsel and to present your case before an administrative discharge board (ADB) hearing. On 16 May 2000, your commanding officer recommended you be separated from the naval service with an Other Than Honorable (OTH) discharge. On 23 May 2000, the separation authority approved the recommendation and directed you be discharged with an OTH by reason of misconduct with a HKK separation code (drug abuse). On 7 June 2000, you were so discharged.

Post-discharge, you submitted an application via the Naval Discharge Review Board (NDRB) requesting your discharge be upgraded, contending it was inequitable because it was administrative and not received through a court-martial. On 1 April 2004, the NDRB found your discharge was proper as issued and no that change was warranted.

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 and Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge and to have the dates of your time lost accounted for as time served. You also contend that you incurred a mental health condition during military service based on the mental health evaluation that diagnosed you with a personality disorder and recommended your entry-level separation. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

Based on your assertion that you incurred a mental health condition, which might have mitigated your discharge character 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:

Petitioner was appropriate referred for psychological evaluation during his enlistment and properly evaluated. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the metal health clinician. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service. Although the psychologist recommended consideration of administrative separation, the Petitioner was found fit for full duty and returned to service, indicating any potential interference in performance due to personality disorder diagnosis was deemed sufficiently mild to allow the

Petitioner to continue to serve. Following his return to duty, the Petitioner began UA, possible due to disappointment regarding the absence of an imminent discharge, which could be consistent with personality disorder. However, there is insufficient evidence to attribute his misconduct to his diagnosed personality disorder, particularly given his successful service of more than a year following his return from UA. Additional documents (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 evidence of a mental health condition experienced during military service (PDNOS). There is insufficient evidence that his misconduct could be attributed to his mental health condition."

In response to the AO, you provided a statement that provided further clarification regarding the circumstances of your case.

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 SCM and NJP, 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. Further, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to your mental health condition. Finally, the Board found no error with the Navy's decision to retain you on active duty despite your diagnosed personality disorder. Based on the medical evidence, you were deemed fit for duty and eligible to continue your enlistment. 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. 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,

11/9/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]