



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

■
Docket No: 5548-22
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 28 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 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 12 October 2022. Although you were provided an opportunity to respond to the AO, you chose not to do so.

During your enlistment processing you disclosed minor traffic violations and having used marijuana. Subsequently, you enlisted in the U.S. Navy and began a period of active duty on 27 August 1979. On 25 October 1979, you reported to Aviation Boatswain's Mate Aircraft Handling Accession "A" School at the Naval Air Technical Training Center (NATTC). On 14 February 1980, you received your first nonjudicial punishment for the possession of marijuana

on board █ You were determined not to be drug dependent and retained in the naval service, after local counseling was completed.

On 9 March 1980, you reported to █ On 29 July 1980, you received a second NJP for a period of unauthorized absence lasting less than 24 hours and possession of amphetamines. On 28 April 1981, you received a third NJP for failing to obey the general proximity rule while moving an aircraft. On 13 September 1982, you received your fourth NJP for the wrongful possession of hashish/marijuana and two military identification cards. As a result, on 25 September 1982, you were notified of your pending administrative separation by reason of misconduct as evidenced by drug abuse, at which time you waived your right to consult with military counsel and have your case heard at an administrative discharge hearing. Your Commanding Officer forwarded your package to the separation authority (SA) recommending your discharge with an Other Than Honorable (OTH) characterization of service. On 1 December 1982, the SA approved the recommendation and directed you be discharged with an by reason of drug abuse with an OTH. On 22 December 1982, 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 have been diagnosed with PTSD post-service and your belief that you were suffering from PTSD symptoms in service. For purposes of clemency and equity consideration, the Board noted you submitted a personal statement along with documentation to support your mental health claim.

Based on your assertion that you incurred PTSD during military service, which might have mitigated the circumstances that led to your 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:

Petitioner's in-service records did not contain evidence of a diagnosis of a mental health condition aside from drug abuse. Petitioner did not provide details of purported trauma that occurred while he was stationed aboard █, however the timeline of his onset and development of substance use makes it difficult to establish a nexus with his in-service misconduct, as it was noted that he had a long history of polysubstance abuse that dated to pre-service. Additionally, two of the Petitioner's NJP's precede the traumatic events that he listed as causes of PTSD.

The AO concluded, "it is my considered clinical opinion that the Petitioner could have been suffering from PTSD while in service, however there is insufficient evidence that PTSD caused his misconduct resulting in an unfavorable discharge."

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 multiple drug 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 that PTSD caused your misconduct. As explained in the AO, you entered the Navy with a history of drug abuse and your first drug offense while on active duty predated your alleged traumatic events that form the basis for your PTSD claim. 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,

12/21/2022

█