



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

██████████
Docket No: 5822-22
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 Board waived the statute of limitation 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 9 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 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, and applicable statutes, regulations, and policies, to include to 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) of a qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal to the AO, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Navy's delayed entry program (DEP), on 16 December 1999, after reporting "no" to prior illegal drug use. However, you were administratively separated in an entry-level status with uncharacterized service, on 17 January 2000, after a positive drug test.

In your subsequent application to reenlist, on 1 June 2000, you reported pre-service drug use of marijuana as having occurred on 15 November 1999, which preceded the date of the initial enlistment application in which you denied drug use. Notwithstanding this initial fraudulent entry, you were approved for three local waivers for your positive drug test, for your discharge from the DEP, and for a non-minor misdemeanor of reckless operation which also had not been reported during your first enlistment application.

On 19 June 2000, you began a period of active duty. By September of 2000, you received your first nonjudicial punishment (NJP) for two specifications of violating Article 92 by underage drinking and by wrongfully consuming alcohol while in a Phase I liberty status. Although you were counseled following your NJP that further misconduct could result in administrative separation under other than honorable conditions, you had another alcohol-related incident, on 6 October 2000, and were referred for a medical evaluation due to having had your second underage drinking incident within 1 month. You were subject to a second NJP, on 16 November 2000, for two violations of Article 86, for being absent without authority; Article 92, for underage drinking; Article 134, for breaking restriction; and, Article 112, for wrongful use of a controlled substance (cocaine). Upon being notified of processing for administrative separation for misconduct due to drug abuse, commission of a serious offense, and pattern of misconduct, you waived consultation with legal counsel and waived your right to a hearing before an administrative board. Commander, Naval Training Center, approved your separation, and you were discharged, on 14 December 2000, with an Other Than Honorable (OTH) characterization of service for pattern of misconduct.

You applied to the Naval Discharge Review Board (NDRB) in 2003, contending that you were a good athlete in your youth and believed you could “get away with everything” but that you learned a lot about yourself after your discharge, had grown up, and turned yourself around. You submitted as evidence of post-discharge character that you worked over 40 hours per week while attending college and submitted transcripts as evidence in support of your contentions. The NDRB denied your application on 14 February 2003 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 to upgrade your discharge and your contentions that you found God after your separation from the Navy, which enabled you to complete your master’s degree, establish a healthy relationship, and obtain diagnosis and treatment of your mental health disorders of depression and attention-deficit hyperactivity disorder. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

Because you contend that a mental health (MH) condition affected your discharge, the Board also considered 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. He denied symptoms of alcohol or substance use disorder when evaluated during service. He has provided no post-service 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, particularly as he had a history of substance use prior to entry into service. Additional records (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 insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to a mental health condition.

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 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. Further, the Board considered that you were provided multiple opportunity to correct your conduct issues by the Navy but continued to commit misconduct. Finally, the Board concurred with the AO that there is insufficient evidence 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. While the Board considered your assertion of your post-discharge good character, 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 is attached 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,

1/4/2023

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Executive Director
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