



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

██████████
Docket No. 6099-22
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 3 February 2023. 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 and licensed clinical psychologist which was previously provided to you. You were afforded an opportunity to submit a rebuttal, but did not.

You enlisted in the Marine Corps and began a period of active duty on 14 December 1982 with an admitted pre-service history of having tried marijuana. On 22 July 1983, after less than 8 months of service, you accepted nonjudicial punishment (NJP) for wrongful use of marijuana at a time sufficiently proximate to resumption of regular duties that there existed a probability due to the amount used that your performance could be adversely affected. Following a positive drug lab message on 20 December 1983, shortly after your first year of service, you received a second NJP for another violation of Article 112a due to knowing and wrongful use of a controlled substance – specifically, marijuana. During drug abuse screening, you reported that

you were an occasional user of marijuana and that you wanted to be discharged from the Marine Corps due to your attitude towards the service; you were found not dependent based upon your self-report of drug use. Subsequently, you were notified of administrative separation proceedings by reason of misconduct due to drug abuse. After consultation with legal counsel, you elected to waive your right to a hearing before an administrative board and, instead, elected to submit a statement.

In your statement, you asserted that you had been a good Marine except for your problem with using marijuana and that you believed you should have been afforded an opportunity to participate in the drug exemption program after your first offense and afforded an opportunity for rehabilitation treatment or a General discharge, under honorable conditions, at that time, rather than being punished. The recommendation for your discharge under other than honorable conditions was forwarded on 13 February 1985; after it was approved, you were discharged on 14 March 1985 with final proficiency and conduct marks of 4.2 and 3.6 respectively.

Your application to the Naval Discharge Review Board (NDRB), wherein you contended that you had not been offered professional rehabilitation by a qualified drug counselor at the time of your drug use and that your discharge was too harsh, was considered on 18 October 1994. You subsequently applied to the Board contending that youth and immaturity contributed to the circumstances of your discharge, which was considered on 4 November 2004.

On reconsideration of your request for relief, the Board carefully weighed all potentially mitigating factors, to include your desire to upgrade your discharge and your contention that you had "high" proficiency and conduct marks but suffered from a severe asthma condition which was overlooked and for which you assert that the use of marijuana helped you clear your lungs. Because you also claim that post-traumatic stress disorder (PTSD) or another mental health condition affected your discharge, the Board also considered the AO, which noted that you endorsed depression or nervous trouble during your separation physical but indicated that you were otherwise in good medical condition except during an asthma attack. However, the AO also observed that Petitioner you provided no medical evidence in support of your claims to identify a diagnosis, symptoms or behaviors which might have a nexus to your marijuana use. Therefore, the AO found insufficient evidence of a mental health condition to which your misconduct could be attributed. The Board concurred with the AO in this regard and, likewise, found insufficient evidence that your use of marijuana might reasonably have been to "clear" your lungs due to asthma attacks. Further, the Board noted that you did not submit evidence of post-discharge character for consideration. As a result, the Board concluded that the potentially mitigating [and/or favorable] factors you submitted for consideration are insufficient to outweigh your misconduct evidenced by repeated in-service drug abuse. Accordingly, the Board determined that your request does not warrant 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,

2/22/2023

[REDACTED]

Executive Director

[REDACTED]