



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. 6216-22
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 18 January 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 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the U.S. Navy and began a period of active duty on 27 July 1973. In July 1974, you attended Counseling and Assistance (CAAC) for substance abuse and determined not to be dependent or addicted to drugs. However, your records document your drug usage since age 13 and continued usage of multiple controlled substances while on active duty. Later, you started a period of unauthorized absence (UA) on 12 August 1974 and you missed ships movement on 27 August 1974. As a result, you received non-judicial punishment, on 26 September 1974, for 22 days UA. Subsequently, the (CO) made his recommendation that you be discharged for

Unsuitability, based on your apathy and defective attitude, and be assigned a General (Under Honorable Conditions) (GEN) characterization. You were so discharged on 23 October 1974.

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 was not limited, your request to upgrade your characterization of service and contentions that you were not really guided at the time and made the choice to be discharged when given the option. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 1 December 2022. The AO stated in pertinent part:

Petitioner's was appropriately referred for psychological evaluation during his enlistment and properly evaluated. Although he did not receive a formal mental health diagnosis, he demonstrated behavior consistent with a substance use disorder. Substance use is incompatible with military readiness and discipline and considered amendable to treatment, depending on the individual's willingness to engage in treatment. The evidence indicates he was aware of his misconduct and deemed responsible for his behavior during military service. Unfortunately, he has provided no medical evidence of another mental health condition incurred in or exacerbated by military service. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion that there is insufficient evidence of a diagnosis of mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to mental health condition."

After thorough review, the Board concluded that your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your UA and drug abuse, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. In particular, the Board found your extensive use of drugs to be especially egregious conduct. 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. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a diagnosis of mental health condition that may be attributed to military service, and there is insufficient evidence your misconduct could be attributed to mental health condition. Finally, the Board noted you provided no evidence to substantiate your contentions that your discharge was voluntary. Your records document that your discharge was involuntary and based on your apathetic attitude. As a result, the Board determined that significant negative aspects of your active service outweighed the positive aspects and continues to warrant a GEN 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 granting you the relief you requested or granting relief as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board determined 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,

1/30/2023

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