



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. 6739-22

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 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 9 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 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, 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)/mental health condition (MHC) (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 dated 11 November 2022. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 23 September 1969. On 27 April 1970, you submitted a sworn statement to an NIS agent admitting the use of illegal drugs prior and during military service. As a result, you were notified of the initiation of administrative separation proceedings by reason of unfitness due to drug abuse, at which point, you decided to waive your procedural rights. On 7 July 1970, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of unfitness due to drug abuse. On 23 July 1970, an Enlisted Evaluation Board recommended that you be administratively

separated from the Navy by reason of unfitness due to drug use admission. On 29 July 1970, the separation authority approved the recommendation and your discharge by reason of unfitness due to drug abuse. On 31 July 1970, you were so discharged.

On 13 October 2006, this Board denied your previous request for a discharge characterization upgrade.

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 for a discharge upgrade and contentions that (a) your discharge was improper because you were never offered treatment for substance abuse, (b) you were diagnosed with a learning disorder that involves difficulty reading, (c) your inability to read and comprehend manuals led to anger, frustration, and substance abuse issues, and (d) marijuana use is legal in most states. 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, the Board considered the AO. The AO stated in pertinent part:

The Petitioner contends that he was frustrated with dyslexia and other mental health issues that made his work in the Navy difficult. There is no evidence that the Petitioner was diagnosed with a mental health condition or dyslexia in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition or learning disability. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement and provided medical records are lacking sufficient detail to establish a nexus with his misconduct. Additional records (e.g., postservice medical records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) are required to render an alternate opinion.

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

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 drug abuse admission, 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. Additionally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition or a learning disability. 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. 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 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 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,

1/25/2023

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Executive Director

Signed by: █