



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

██████████
Docket No. 6949-22
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 13 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, 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) of a qualified mental health provider and your response to the AO.

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, after receiving moral waivers for underage drinking and driving under the influence, and began a period of active duty on 28 October 2001. You served aboard the ██████████ during its deployment in support of Operation ENDURING FREEDOM, with combat operations including the launch of 28 Tomahawk missiles. You married shortly after you returned from deployment but remained a geographic bachelor. On 16 April 2004, just before your spouse relocated to your duty station, a Navy Drug Lab message reported your urinalysis test positive for marijuana metabolites. You absented yourself without authority from

20 – 26 April 2004 and, upon your return, were subject to nonjudicial punishment (NJP) for violations of the Uniform Code of Military Justice under Article 86 due to your unauthorized absence and Article 112a for wrongful use and possession of a controlled substance. You were notified of processing for administrative separation by reason of misconduct due to drug abuse. You waived your right to a hearing before an administrative board; your commanding officer recommended for separation under Other Than Honorable (OTH) conditions, and you were discharged on 21 May 2004.

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 your spouse was killed in a car accident after your discharge, which resulted in your homelessness. The Board also considered your evidence that you now rely on your parents for support because a stroke in 2014 left you with severe seizures and rendered you disabled, eligible for medical care from the Department of Veterans Affairs (VA) for your service-connected conditions only and, without additional VA disability benefits, neither you nor your parents know how you will manage to subsist if you survive them. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

Because you also contend that post-traumatic stress disorder (PTSD) contributed to your misconduct, 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. Post-service, the VA has determined service connection for a diagnosis of PTSD that is temporally remote to his military service. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct. There is no evidence he was unaware of his misconduct or not responsible for his behavior. Additional records (e.g., complete VA 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 there is post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD or another mental health condition."

In response to the AO, you submitted rebuttal evidence providing additional information regarding the circumstances of your case.

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 NJP, 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. Additionally, the Board concurred with the AO that there is insufficient evidence your misconduct could be attributed to PTSD or another mental health condition. The Board noted that the rating decision by the Department of Veterans Affairs expressly states "the evidence of

