



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. 7059-22

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 Navy and began a period of active duty on 9 February 1977. You subsequently completed this enlistment with an Honorable characterization of service on 3 March 1981. You reenlisted into the Navy on 21 October 1982 and commenced another period of active duty. On 22 April 1984, you received non-judicial punishment (NJP) for wrongful use of marijuana. On 2 June 1984, you received a second NJP for wrongfully manufacturing an alcoholic beverage for use onboard a naval vessel. On 5 June 1984, you were issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and

conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation. On 28 May 1984, you were evaluated and diagnosed with immature personality disorder and manipulative personality disorder. On 13 June 1984, you were convicted by a summary court-martial (SCM) of 31 periods of unauthorized absences from restricted men's muster and disobeying a lawful order. On 9 July 1984, a medical officer screened you for suitability to participate in the counseling and assistance center (CAAC) substance abuse treatment program. The screening for your suitability to participate determined that you were non-dependent of alcohol/drugs. On 10 July 1984, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to commission of a serious offense, misconduct due to pattern of misconduct, and misconduct due to drug abuse. You were advised of, and waived your procedural rights to consult with military counsel and present your case to an administrative discharge board (ADB). Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed your OTH discharge from the Navy. On 29 August 1984, you were discharged from the Navy with an OTH characterization of service by reason of misconduct due to pattern of misconduct.

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 change your discharge character of service and your contentions that your discharge was unjust due to mental health conditions that went undiagnosed, you were going through a rough period of service, you were having marriage issues and dealing with the death of a family member, you did violate several Article's of the Uniform Code of Military Justice (UCMJ), however, your actions were related to your mental health illness of PTSD, anxiety and depression, you realize now that you should have made smarter choices, and you are still suffering 35 plus years later from PTSD, anxiety and depression. For purposes of clemency and equity consideration, the Board noted you provided Department of Veteran Affairs (VA) health care records but no 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 6 December 2022. The AO noted in pertinent part:

The Petitioner submitted one partial treatment note form the █ VAMC dated November 2019 that states, "...Mental health diagnosis of PTSD, depression..." however there is no mention as to the etiology of these diagnoses. There is no evidence that he was diagnosed with a mental health condition in military service, other than with personality disorders, nor did he exhibit any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. 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 that his misconduct could be attributed to a mental health condition.”

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your two NJPs and SCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug offense. The Board determined that illegal drug use by a Sailor is contrary to Navy core values and policy, renders such Sailors unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. Furthermore, 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. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. Additionally, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence that your misconduct could be attributed to a mental health condition. As noted in the AO, your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor 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 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,

2/2/2023

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Executive Director

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