



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. 7354-22

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 your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 6 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 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 14 December 2022. Although provided with an opportunity to submit a rebuttal to the AO, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 20 June 2001. On 21 June 2001, you were counseled and granted an enlistment waiver for failing to disclose marijuana use during your enlistment processing. On 23 January 2004, you received nonjudicial punishment (NJP) for violating a lawful order by consuming alcohol under the age of 21. Subsequently, you were counseled that you were being retained in the naval service and warned that any further deficiencies in your performance or conduct may result in disciplinary action and or processing for administrative separation. On 13 July 2005, you were found guilty at a special court-martial (SPCM) of the wrongful use of marijuana and sentence to forfeitures of \$923.00 and to be reduced in rank to E-3. On 8 August 2005, you were notified of your pending administrative separation by reason of drug abuse, at which time you waived your right to consult with military

counsel and to have your case heard before an administrative discharge board. On 8 August 2005, your commanding officer recommended you be discharged with an Other Than Honorable (OTH) characterization of service. After the separation authority approved your discharge, on 9 September 2005, you were so discharged.

Post-discharge, you requested a discharge upgrade via the Naval Discharge Review Board (NDRB). The NDRB denied your request, on 22 January 2009, after determining your discharge was proper as issued.

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: (1) you incurred PTSD during military service, (2) you sought medical treatment for your condition and you were trying to overcome obstacles related to PTSD, (3) you deeply regret your actions which led to your discharge, and (4) post-service you have made positive strides in your life and have become a productive member of society. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

Based on your assertions that you incurred PTSD and other mental health concerns during military service, which might have mitigated the circumstances surrounding your separation from service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no medical evidence in support of his claims. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms during military service or a nexus with his misconduct, particularly given his pre-service behavior that appears to have continued during military service. Additional records (e.g., active duty or 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 there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD."

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 NJP and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved 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. Furthermore, the Board noted that marijuana use in any form is still against the Department of Defense regulations and not permitted for recreational use while serving in the military. Additionally, the Board considered the likely negative effect your

misconduct had on the good order and discipline of your command and found that your misconduct was intentional, and made you unsuitable for continued naval service. Lastly, the Board concurred with the AO that there is insufficient evidence your misconduct could be attributed to PTSD. 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. While the Board commends your post-discharge good character, 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 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,

2/21/2023

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Executive Director

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