



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. 8985-22
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 21 April 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 to 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, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal to the AO, you chose not to do so.

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 Marine Corps and began a period of active duty on 18 August 1983. After a unit-wide urinalysis test in July of 1984, you had a positive result for marijuana use and were subsequently placed on urinary surveillance. On 31 July 1984, you were subject to nonjudicial punishment (NJP) for wrongful use of marijuana. In spite of being subject to routine weekly urinalysis testing, you had a second positive urinalysis for cocaine less than a month after your

NJP. As a result, on 5 December 1984, you were notified of separation proceedings for the reason of misconduct due to drug abuse and elected to waive your right to a hearing before an administrative board. Your command forwarded a recommendation for your discharge under Other Than Honorable (OTH) conditions which, after being subject to legal review, was approved by the Commanding General, ██████████. You were so discharged on 27 December 1984.

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 change your last name, as well as your contentions that you currently suffer significant cognitive decline due to early-onset Alzheimer's Disease, for which you believe you suffered early symptoms in your late teens or early 20s during the time of your military service. You also believe that these symptoms may have affected your cognitive abilities during your military service and contend that the criminality of your marijuana use is considered less serious today than it was in the 1980s when you were discharged. For purposes of clemency and equity consideration, the Board noted you submitted evidence of your post-discharge mental health diagnosis of January 2021.

Because you contend that a mental health condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

Petitioner's diagnosis of Alzheimer's disease is temporally remote to his military service. Given the passage of time and influence of other factors in intervening years, it is unlikely that he was demonstrating undiagnosed symptoms of Alzheimer's disease during military service. There is insufficient evidence to establish a nexus between his current diagnosis and his in-service misconduct, particularly given the lack of evaluation or treatment for symptoms in service which could have been conceptualized as early undiagnosed cognitive decline. 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 clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute the circumstances of his separation to a mental health condition."

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 and positive urinalysis for cocaine use, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included two 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. Further, the Board concurred with the AO that there is insufficient evidence to attribute the circumstances of your separation to a mental health condition. The Board agreed with the AO that there is insufficient evidence to establish a nexus between your

current diagnosis and your in-service misconduct, particularly given the lack of evaluation or treatment for symptoms in service which could have been conceptualized as early undiagnosed cognitive decline. 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 is sympathetic of the debilitating nature of your recent mental health diagnosis and carefully considered the evidence you submitted in mitigation, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct.

Regarding your request for a name change in your military record, the Board noted that you did not provide any evidence to support your request. At a minimum, the Board requires a court order from a court of competent jurisdiction and further evidence that failure to effect the name change would result in an injustice. 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,

5/1/2023

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Executive Director

Signed by: █