



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. 9054-22
Ref: Signature Date



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 12 June 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). 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 25 April 2023. Although you were afforded an opportunity to respond to the AO, you chose not to do so.

You enlisted in the U.S. Marine Corps and began a period of active duty on 9 October 2018. On 12 January 2021, you received your first nonjudicial punishment (NJP) for violating a lawful general order or regulation, dereliction in the performance of duties, and false official statement with intent to deceive. You were awarded forfeiture of \$1,000 pay per month for one (1) month, 30 days restriction, and a reduction in rank to E-2, which was suspended for six (6) months. You were issued administrative remarks which documented these deficiencies in your conduct and advised you that failure to take corrective action and any further violations of the UCMJ (Uniform Code of Military Justice), disciplinary action, or incidents requiring formal counseling

may result in judicial or adverse administrative action, including but not limited to administrative separation.

On 28 April 2021, your suspended reduction in rank to E-2 was vacated and you were permanently reduced in rank. On 17 May 2021, you received a second NJP for the wrongful use of a controlled substance. As a result, you were notified of administrative separation processing for drug abuse. On 27 August 2021, your Commanding Officer recommended to the separation authority that you be discharged with an Other Than Honorable (OTH) characterization of service. On 4 September 2021, the separation authority directed you be discharged with an OTH characterization by reason of misconduct/drug abuse. On 15 September 2021, you were so discharged.

The Board carefully weighed all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta and Wilkie Memos. These included, but were not limited to, your desire to upgrade your discharge and to have derogatory information removed from your record amid and be awarded disability benefits based on your contentions that you incurred mental health concerns (MHC) during military service. You contend that: (1) your experience as a Marine has only given you trauma that you try to block out but can't because it continues to haunt your everyday life," (2) [you experience difficulty with] "things as simple as sleeping, talking to people, going out in public due to fear of being judged, confronted, or even racially discriminated against not only now but also when you were on active duty which is why you chose to partake in marijuana use, and (3) "you were told substance use would ease your stress and calm your fears which was accurate." For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

Based on your assertions that you incurred mental health concerns during military service, which might have mitigated your discharge characterization of 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:

The Petitioner indicated, "My experience as a Marine [*sic*] has only given me trauma." There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He was assessed by the Substance Abuse Counselor (SACO) in June 2021 and found to have no diagnosis, and was assessed by medical personnel for a PTSD/TBI screening in August 2021, also screening negative for any conditions. He has provided no medical evidence in support of his claims. 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 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it included a drug offense. The Board determined 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. Lastly, the Board concurred with the AO that there is insufficient evidence of a mental health condition experience during military service that could be attributed to your misconduct. The Board noted, besides your personal statement, you provided no evidence to substantiate your contentions. 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. Based on this finding, the Board also concluded the evidence supports your separation for drug abuse. Therefore, the Board found insufficient evidence to remove of any derogatory materials or grant you disability benefits. Ultimately, even in light of the Wilkie Memo and reviewing the record liberally and 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,

6/14/2023

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Executive Director

Signed by: █