



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. 2054-23
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 30 October 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional, dated 21 September 2023, and your response to the AO.

You enlisted in the Navy and began a period of active duty on 31 December 1980. Upon your enlistment, you signed and acknowledged all the content included in the Navy's Drug Abuse Certificate. On 6 October 1983, you were convicted by summary court martial (SCM) for larceny of \$1,361.32 in Rent-Plus housing allowance. You were sentenced to reduction to the inferior grade of E-1 and confinement at hard labor for a period of 31 days. On 9 November 1983, you received nonjudicial punishment (NJP) for wrongful use of a controlled substance-marijuana. On 19 October 1984, you were evaluated by a medical officer as a result of your involvement with drugs, at which point, you denied drug usage and reported that you ate baked goods at a party

laced with marijuana. On 27 November 1984, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to commission of a serious offense and misconduct due to drug abuse and decided to waive your procedural rights. Your commanding officer recommended to the separation authority that you be discharged with an Other Than Honorable (OTH) discharge characterization by reason of misconduct due to commission of a serious offense and drug abuse. On 24 January 1985, the separation authority approved and ordered an OTH discharge characterization by reason of misconduct due to drug abuse. On 30 January 1985, you were evaluated by a medical officer, at which point, you again denied drug dependence but admitted that you only used drugs for recreational purposes. On 15 February 1985, you were so discharged.

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 for a discharge upgrade and contentions that: (a) you joined the Navy with plans to make it a career, get married, and raise a family, (b) you were persuaded to continue serving at █ vice furthering your education, (c) you felt depressed about not been able to further your education while simultaneously feeling that you were doing justice by staying at █, (d) you did not have anyone to talk to about your feelings, so you suppressed them, (e) your shipmates would share stories that would increase your anxiety, (f) you witnessed other shipmates using marijuana cigarettes during their downtime as it was considered a normal thing, and (g) you used marijuana a couple times with shipmates but are now remorseful for your actions. For purposes of clemency and equity consideration, the Board noted you submitted three advocacy letters that describe post-discharge accomplishments.

Based on your assertion of a mental health condition, the Board considered the AO. The AO stated in pertinent part:

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. His personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Furthermore, he engaged in two separate drug abuse screens whereby he denied dependence and did not mention depression or any other condition that may have contributed to his use. 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."

On 6 October 2023, the Board received your rebuttal in response to the AO. After reviewing your response, the AO remained unchanged.

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 SCM, 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. 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 that your misconduct could be attributed to a mental health condition. As explained in the AO, your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct. Furthermore, you engaged in two separate drug abuse screens whereby you denied dependence and did not mention depression or any other condition that may have contributed to your use. 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 carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, even in light of the Kurta, Hagel, and Wilkie Memos 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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 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,

11/18/2023

