



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. 2274-23
Ref: Signature Date

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Dear █

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 14 December 2023. The names and votes of the members of the panel 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, 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). In addition, the Board considered the 26 September 2023 Advisory Opinion (AO) from a Licensed Clinical Psychologist and your response to the AO.

A review of your record shows that you enlisted in the Navy and entered active duty on 5 July 2005. On 11 August 2006, you received non-judicial punishment (NJP) for violating Article 92 (Failure to obey lawful order) and Article 107 (False official statement) of the Uniform Code of Military Justice. On 14 December 2006, you received your second NJP for violation of Article 86, unauthorized absence and Article 112a, wrongful use of a controlled substance.

Consequently, you were notified of your Commanding Officer's recommendation your separation due to misconduct, drug abuse, with an Other Than Honorable (OTH) characterization

of service. You were so discharged from the Navy on 5 January 2007. Your Certificate of Release or Discharge from Active Duty (DD Form 214) states drug abuse as the narrative reason for separation.

On 13 March 2008, the Naval Discharge Review Board (NDRB) denied your request to upgrade your characterization of service to Honorable. You contended that your discharge was improper because THC, the substance found in marijuana, was in your hair from prior to your enlistment. The NDRB denied your request noting that that the Navy does not use hair tests and that your drug use was identified through a command urinalysis.

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 or disability discharge and contentions that you deserve a medical discharge because you suffered from mental health conditions while in-service that resulted in your misconduct. For purposes of clemency and equity consideration, the Board noted you provided letters of support from family members.

Based on your assertions that you incurred a mental health concerns (MHC) during your military service, which might have mitigated your discharge character 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:

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 did not submit any medical evidence in support of his claim. 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, "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"

In response to the AO, you submitted a statement of support that provided additional clarifying information regarding your drug abuse.

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 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

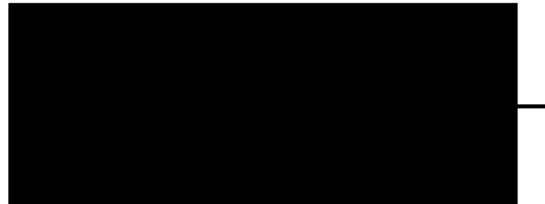
military. Further, the Board noted that you did not submit any medical evidence in support of your claim, to include a diagnosis in-service or a diagnosis post-service. Therefore, the Board concurred with the AO that there is no evidence of a mental health condition while in-service. The Board also considered that you initially denied your drug abuse in your application to the NDRB. 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, 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.

Regarding your request for a disability discharge, the Board determined there was insufficient evidence you suffered from a unfitting condition while on active duty. In making this finding, the Board again relied on the AO which concluded there is insufficient evidence of a mental health condition that may be attributed to your military service. The Board also concluded that you were ineligible for disability processing based on your misconduct that resulted in an OTH characterization. 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 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.

Sincerely,

1/9/2024

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