



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. 6107-23
Ref: Signature Date

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Dear Petitioner:

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.

A three-member panel of the Board, sitting in executive session, considered your application on 16 April 2024. 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, and applicable statutes, regulations, and policies as well as the 26 March 2024 advisory opinion (AO) furnished by the Licensed Clinical Psychologist, the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta 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).

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

The Board carefully considered your request to restore your rank to E-5. The Board did not consider your request for leave reimbursement because the Navy Pay and Personnel Support Center acted upon your request to reimburse 46.5 days of leave. The Board considered your contention that pursuant to the Naval Discharge Review Board (NDRB) decision, your discharge characterization was upgraded to General. You also contend that your benefits when discharged under Other Than Honorable conditions were withheld.

The Board noted that during January 2020 you presented to the emergency room after being pulled over the previous night with marijuana in your car and you subsequently admitted to having used

marijuana. You refused non-judicial punishment (NJP) and, after charges were preferred for court-martial, you requested Separation in Lieu of Trial by Court-Martial (SILT). On 21 August 2020, you received NJP for violating Uniform Code of Military Justice (UCMJ) Articles 107 (False Official Statement) and 112a (possession and use of marijuana). The Commanding Officer (CO) awarded reduction in rate to E-4, restriction, and extra duty. On 15 October 2020, you were discharged Under Other Than Honorable Conditions, In Lieu of Trial by Court Martial.

Subsequently, the NDRB approved a correction to your discharge characterization by changing it to General (Under Honorable Conditions). The NDRB determined that the narrative reason would remain In Lieu of Trail by Court Martial with the separation code KFS, and reentry code RE-4. The NDRB also determined that violations of Article 112a, UCMJ warrants separation from Naval Service to maintain proper order and discipline and usually results in an unfavorable characterization of discharge, or a punitive discharge and possible confinement. In your case, the command did not pursue a punitive discharge but opted instead for the more lenient administrative discharge. When making the decision to change the characterization of your discharge the NDRB considered your overall capacity to serve, entire military performance and conduct, your mental health diagnosis, and nexus between your drug use and mental/emotional stability.

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 reinstatement of your paygrade and contention that you are entitled to relief based on the NDRB decision to upgrade your characterization of service. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

You also indicate in your application that Post Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), and other mental health conditions are related to your request. Based on your contentions, the Board considered the AO. The AO stated in pertinent part:

Petitioner presented to Mental Health consistently between February 2019 and January 2020. Notes show consistent exaggeration of symptoms as compared to his anecdote and affect. Several occasions note Petitioner's claim of having been diagnosed with diagnoses that were in fact not given him. There is evidence of in-service diagnoses of Adjustment Disorder with Mixed Anxiety and Depressed Mood, Cannabis Use Disorder and a R/O of Personality Disorder. It is possible that the Petitioner's Adjustment Disorder symptoms contributed to cannabis use.

The AO concluded, "it is my considered clinical opinion there is sufficient evidence of a mental health condition that may be attributed to military service. There is sufficient 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. Notwithstanding the AO and NDRB change to your discharge characterization, the Board determined your NJP for violating UCMJ Articles 107 and 112a is valid and the punishment awarded was proportionate to the violations. In this regard, the

Board found no evidence that your mental health conditions prevented you from understanding that your misconduct was a violation of the UCMJ. Further, your request for separation in lieu of trial by court-martial indicates that you understood the elements of the offenses charged, voluntarily submitted the SILT request free from any duress or promises of any kind. Moreover, prior to NJP, you consulted with counsel and admitted that you were guilty of violating UCMJ Articles 107 and 112a. Ultimately, the Board determined the relief granted by the NDRB was sufficient to address any injustice in your record. The Board thus concluded there is no probable material error, substantive inaccuracy, or injustice warranting reinstatement of your paygrade. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Concerning your request for reimbursement of travel pay, you will need to exhaust your administrative remedies by submitting a travel claim (DD Form 1351-2) to Navy Personnel Command, MyNavy Career Center █
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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. 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,

4/29/2024

