



**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: 7276-20

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 the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 Under Secretary of Defense for Personnel and Readiness regarding requests by Veterans for modification of their discharge due to mental health conditions, sexual assault, or sexual harassment (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 28 June 2021. 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 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, including 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 reviewed a 28 April 2021 advisory opinion (AO) from a mental health professional, a copy of which you were provided and to which you did not provide a response.

The Board determined that your personal appearance, with or without counsel, would 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.

You enlisted in the Navy on 21 May 1984. On 11 October 1984 you received nonjudicial punishment for three periods of unauthorized absence. On 15 September 1986 you commenced

a period of unauthorized absence until you surrendered to military authorities on 14 October 1986. During your absence, you missed ship's movement. On 18 February 1987, you were convicted by a special court-martial for unauthorized absence, missing ship's movement, possession of drug paraphernalia, possession of methamphetamines on two occasions, and communicating a threat. Your sentence included a bad conduct discharge (BCD). On 20 October 1987, the convening authority executed your BCD and on 4 November 1987 you were so discharged.

The Board carefully considered all potentially mitigating factors in your petition to determine whether the interests of justice warrant relief in your case including in accordance with the Wilkie Memo. You contend in your petition that your misconduct while in the Navy should be mitigated by a mental health condition caused by taking anti-malarial drugs while on active duty. You appended to your petition several medical records from civilian providers.

In light of your assertion of a mental health condition, the Board received, and reviewed, the 28 April 2021 AO. Your naval records as well as all of the materials that you submitted, were reviewed and the AO explained as follows:

Petitioner's in-service records did not contain evidence of a diagnosis of a mental health condition or psychological/behavioral changes, which may have indicated a mental health condition. Throughout his disciplinary actions, counselings, and administrative processing, there were no concerns noted which would have warranted referral to mental health resources. There is insufficient evidence to support his misconduct is attributable to a mental health condition. In particular, methamphetamine use would not be an expected substance to use for an individual suffering from purported anxiety symptoms. As a stimulant, methamphetamine would result in increased heart rate and many of the physical sensations typically feared by a person who suffers from symptoms similar to anxiety.

The AO concluded that, "it is my considered medical opinion the preponderance of available objective evidence failed to establish Petitioner was diagnosed with a mental health condition, suffered from a mental health condition at the time of his military service, or his inservice misconduct could be mitigated by a mental health condition."

In review of all of your materials, the Board did not find an injustice in your record warranting relief. The Board concurred with the finding of the AO and it did not find a nexus between your asserted mental health condition such that it would mitigate the misconduct you engaged in while on active duty. In conclusion, given the totality of the circumstances, as well as a review of your overall service record, which included the imposition of nonjudicial punishment as well as a conviction by a special court-martial, 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,

7/6/2021

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Executive Director

Signed by: █