

DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS 701 S. COURTHOUSE ROAD, SUITE 1001 ARLINGTON, VA 22204-2490

> Docket No: 4332-21 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 limitations 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 13 December 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, 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) (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). Additionally, the Board also considered the advisory opinion (AO) furnished by qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you did not do SO.

During your enlistment processing you answered "yes" to having abused narcotics, dangerous drugs, or marijuana on form NAVCRUIT 1133. This form contained a paragraph describing your understanding that the information provided would be used to determine your enlistment eligibility. Additionally, it contained verbiage that you, "will not abuse any illegal drugs or controlled substances while in the service." You signed this document on 19 June 1980. Ultimately, a waiver was not required for you to enlist.

You enlisted in the U.S. Navy and began a period of active duty on 19 September 1980. On 18 February 1984, you were counselled regarding your performance, which was assessed to be below the minimum standard. You were further advised that failure to demonstrate sustained trend of improvement may result in your administrative discharge. On 24 May 1984, you received Non-Judicial Punishment (NJP) for wrongfully possessing trace amounts of marijuana in your system, as indicated through a positive urinalysis.

On 31 May 1984, you were notified of your pending administrative separation due to drug abuse and unsatisfactory performance, at which time, you elected your right to consult with counsel and to obtain copies of documents which were to be forwarded to Commander, Naval Personnel Command. You waived your right to an administrative discharge board and to submit a statement on your behalf. On 7 June 1984, you were notified of the commanding officer's (CO) intent to recommend to the separation authority that you be discharged with a general (under honorable conditions) (GEN) discharge for drug abuse and unsatisfactory performance. On 13 June 1984, the separation authority directed you be discharged with an OTH for drug use and on 26 June 1984, you were so discharged.

As part of the Board's review, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO regarding your assertions that: (1) several issues and civil rights violations were allowed to enable the Navy to discharge you; (2) you were assaulted while executing an order to subdue a senior enlisted Sailor who kicked you in the groin requiring you to have surgery; (3) upon returning to the command you were harassed and bullied in efforts to support the Sailor who assaulted you as there were concerns you would pursue assault charges against your alleged assailant; (4) your assailant was never held accountable; (5) drug testing commenced in 1983 and was extremely unreliable and subjective; (6) after testing positive for marijuana you cooperated with an investigation and providing names of other marijuana users; (7) as a result of your cooperation you were promised a GEN vice OTH discharge; (8) these incidents resulted in your physical and mental disabilities; and (9) you have PTSD, extreme anxiety, and other issues.

The AO noted your service records do not indicate any diagnosis of an unfitting mental health condition and no post-service records indicate diagnosis of an unfitting mental health condition. The AO opined, based on the current available evidence, there is insufficient evidence that you incurred an unfitting mental health condition or PTSD during your military service, and there is insufficient evidence that your misconduct should be attributed to a mental health condition.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your contentions noted above. The Board viewed your allegations with serious concern. However, this Board is not an investigating agency nor does it have the resources to investigate unsubstantiated allegations. Additionally, the Board noted, aside from your statements and congressional correspondence, you did not submit advocacy letters or post-service documents to be considered for clemency purposes. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your drug use

and NJP, outweighed these mitigating factors. 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. 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,	
	1/13/2022
Executive Director	
Signed by:	

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