



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

■  
Docket No: 5941-21  
Ref: Signature Date

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 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 9 March 2022. 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). The Board also considered an advisory opinion (AO) from a qualified mental health professional dated 19 January 2022, which was previously provided to you.

You enlisted in the Navy and began a period of active duty on 30 April 1980. On 26 August 1981, you were convicted by a summary court-martial (SCM) of aggravated assault. On 23 January 1985, you were convicted by civilian authorities of driving while intoxicated. On 9 January 1986, you received non-judicial punishment (NJP) for wrongful use of marijuana.

On 9 January 1986, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to commission of a serious offense and misconduct due to drug abuse. You were advised of, and waived your procedural rights to consult with military counsel and to present your case to an administrative discharge board

(ADB). Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an other than honorable (OTH) characterization of service. The SA approved the CO's recommendation and directed your OTH discharge from the Navy by reason of misconduct due to drug abuse. On 31 January 1986, you were so discharged.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 19 January 2022. The AO noted that in service, you were diagnosed with an alcohol use disorder. Unfortunately, you have not provided any post-service medical evidence in support of your claims that you incurred an unfitting mental health condition. Additionally, your statement does not provide sufficient detail to determine a nexus with your misconduct, as your misconduct predated your entry into service and appeared to continue during military service. Additional records are required to render an alternate opinion. The AO concluded by opining that there is insufficient evidence that you incurred an unfitting mental health condition during military service. There is insufficient evidence that your misconduct could be attributed to an unfitting mental health condition.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contentions that: (a) during your first four-years of service you had good conduct and good evaluations; and (b) due to your working environment, you experienced stress, which led to marital issues, depression and substance abuse resulting in your OTH discharge. Unfortunately, after careful consideration of the AO and applying liberal consideration, the Board did not find an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service.

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 as previously discussed and your desire to upgrade your discharge character of service. For purposes of clemency consideration, the Board noted you stated post service accomplishments; however, you did not provide supporting documentation describing post-service accomplishments, or advocacy letters. Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined the seriousness of your misconduct as evidenced by a civilian and SCM conviction, and an NJP that involved the wrongful use of a controlled substance, outweighed these mitigating factors. When weighing the evidence, the Board concluded your conduct was a significant departure from that expected from a Sailor and still warrants OTH characterization of service. Accordingly, given the totality of the circumstances, the Board determined 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,

3/23/2022

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Executive Director

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