



**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: 6656-21  
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 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.

A three-member panel of the Board, sitting in executive session, considered your application on 24 January 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 the 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). In addition, the Board considered the advisory opinion (AO) furnished by a qualified mental health professional dated 18 November 2021, which was previously provided to you.

You enlisted in the Navy and began a period of active duty on 11 January 1980. On 3 April 1981, you were convicted by special court-martial (SPCM) of wrongful possession of marijuana. On 20 April 1981, a Drug Disposition was forward to the separation authority stating "Exemption not granted." It was determined that you were not physiologically dependent, but appeared to be psychologically dependent on drugs and alcohol. During the interview and when confronted, you stated you did not intend to stop. On 7 October 1981, you received nonjudicial punishment (NJP) for wrongful possession of marijuana and wrongful possession with the intent to use a pipe for the purpose of inhaling marijuana. You were interviewed and notified that continuation of your past performance could ultimately disqualify you from receiving an honorable discharge. Further, you were warned that failure to improve your behavior could

result in administrative discharge action. On 24 November 1981, you received NJP for being absent from your appointed place of duty by missing 15 restricted men's musters. On 28 January 1982, you received NJP for being disrespectful to a superior petty officer, assault, and communicating a threat. Additionally, you were notified of administrative discharge action by reason of misconduct due to frequent involvement of a discreditable nature with military authorities and drug abuse. After being advised your procedural rights, you elected to waive your right to have your case heard before an administrative discharge board. On 3 February 1982, you were found not drug dependent. On 4 February 1982, your case was forwarded to the separation authority with the recommendation that you receive an other than honorable (OTH) discharge. On 7 February 1982, the separation authority directed that you receive an OTH discharge due to a pattern of misconduct. On 26 February 1992, you were discharged from the Navy with an OTH characterization of service.

A qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO regarding your assertion that you were suffering from a mental health condition during your service. The AO noted that based on the current available evidence, there is insufficient evidence that you incurred an unfitting mental health condition during military service, and there is insufficient evidence that your misconduct could be mitigated by an unfitting 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 assertions that: (a) you were threatened by your superiors and felt that you "had to accept any punishment and get out of the military;" (b) you incurred PTSD due to a rescue mission operation while on deployment stationed in the Persian Gulf rescuing Iranian refugees, received the Navy Expeditionary Medal, and you never received any "Rescue" training; (c) you were just a scared 17 year old kid, who was never debriefed nor did you receive any counseling after the operation; (d) you were introduced to drugs by your superior officers, and when you were caught with drugs, your superiors told you to keep quiet about all the drug use and to "take the fall" or they would "get rid" of you if you "snitched" or blew the whistle on any of them; and (e) you were discharged and kept quiet all of these years, but you are 60 years old and not afraid anymore, you did the best that you could while enlisted and you are proud to have served your country.

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 SPCM conviction for drug possession, three NJPs, one of which involved drug possession, and the fact that you were warned of the consequences further misconduct outweighed these mitigating factors. The Board also concurred with the AO that based on the current available evidence, there is insufficient evidence that you incurred an unfitting mental health condition during military service, and there is insufficient evidence that your misconduct could be mitigated by an unfitting mental health condition. 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,

1/28/2022

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Executive Director

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