



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

█  
Docket No: 6745-21  
1503-21  
271-16  
Ref: Signature Date



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.

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 25 February 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 the advisory opinion (AO) furnished by a qualified mental health provider, which was previously provided to you, the statements you submitted in rebuttal, and subsequent AO.

You enlisted and began a period of active duty in the Navy on 12 March 1981. On 21 January 1982, you received nonjudicial punishment (NJP) for a two day unauthorized absence (UA) in violation of Article 86, Uniform Code of Military Justice (UCMJ). In June 1982, you were placed on limited duty due to knee pain. You received a second NJP on 29 July 1982 for unauthorized possession of a vehicle pass and falsifying an official document by placing false serial numbers and issuing initials on the vehicle pass. These offenses were in violation of Articles 92 and 107, UCMJ. You were apprehended by civil authorities in 1983 for the unlawful possession of a controlled

substance, PCP, for sale. On 31 October 1983, you received a civil conviction by the ██████████ Municipal Court for possession of PCP with the intent to sell. You were sentenced to three years of confinement. On 27 December 1983, you were notified of administrative separation processing by reason of misconduct due to civilian conviction. You consulted with counsel and waived your procedural right to request that an administrative discharge board review your case. You were discharged on 5 October 1984 with an other than honorable characterization of service.

You contend you suffered from preexisting diagnoses of ██████████ and ██████████ due to trauma related to a ██████████ you experienced when you were five years old. You state you suffer from ██████████, which causes uncontrollable crying episodes, and ██████████ ██████████. You further state you are predisposed to alcohol and drug abuse, and the challenges took a toll when the Navy prescribed you morphine, post-surgery, for a knee injury that occurred on active duty. You contend that the Navy is responsible for your opioid addiction and that the Navy failed to follow regulations because it did not provide you with medical treatment.

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 and desire to upgrade your discharge. The Board also relied on the AO in making its determination. The AO noted that you did provide new and material evidence in support of your claims; however, the medical records did not provide sufficient detail to establish a nexus with your misconduct. In particular, your civilian criminal conviction for misconduct involving distribution of drugs is not a behavior typically resulting from a mental health condition or a maladaptive coping strategy. Consequently, the AO concluded that there was some post-service evidence that you may have incurred an ██████████ during military service. However, there was insufficient evidence that you may have incurred PTSD or Traumatic Brain Injury during military service, or suffered from those conditions during military service. Furthermore, there was insufficient evidence that your misconduct could have been mitigated by an unfitting ██████████. Based upon this review, the Board concluded that the potentially mitigating factors in your case were insufficient to warrant relief. Specifically, the Board determined that the severity of your misconduct, as evidenced by your three NJPs and civil conviction, outweighed these mitigating factors. In particular, the Board found your civilian drug possession conviction, that resulted in a 3-year confinement sentence, particularly aggravating and determined your mitigation evidence insufficient to overcome the seriousness of that offense. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief. Additionally, whether or not an individual is entitled to veterans' benefits is a matter under the cognizance of the Department of Veterans Affairs (VA). You may contact the nearest office of the VA concerning your right to apply for benefits. If benefits have been denied, you may be able to appeal the denial under procedures established by the VA.

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

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correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

3/15/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]