



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

█  
Docket No: 435-22  
3597-13  
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 6 May 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 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. Although you were afforded the opportunity to submit a rebuttal, you did not do so.

You enlisted and began a period of active duty in the Navy on 15 September 1982. You entered a period of unauthorized absence (UA) from 17 August 1984 to 4 September 1984. On 13 September 1984, you received nonjudicial punishment (NJP) for the 19 day UA in violation of Article 86, Uniform of Military Justice (UCMJ). Your second NJP occurred, on 27 March 1985, for wrongful marijuana use, as identified by a urinalysis, in violation of Article 112a, UCMJ. The same day you were diagnosed with psychosocial dependence on marijuana. Your record further indicates “[Petitioner] has used THC hundreds of times prior to and during active service. Denies any other drug use but admits use of THC every weekend.” On 10 June 1985, you were formally counseled

concerning your 19 day UA, drug abuse, being late for watch quarters and additional UA, missing ship's movement, failure to carry out direct orders, and a detrimental attitude towards the Division. You received your third NJP, on 13 August 1985, for failure to go to your appointed place of duty in violation of Article 86, UCMJ. You were also found guilty of two specification of Article 92, UCMJ, for failure to obey a lawful order by not standing watch and stating "don't worry about it," and dereliction in the performance of duties. On 14 September 1985, you were notified of administrative separation processing by reason of misconduct as evidenced by drug abuse and pattern of misconduct. You did not exercise your right to consult with counsel and waived an administrative discharge board. On 16 October 1985, you refused inpatient treatment at a Department of Veterans Affairs hospital prior to your discharge. You were discharged, on 16 October 1985, with an Other Than Honorable (OTH) characterization of service. You previously requested an upgrade to your characterization of service to this Board but were denied on 22 April 2014.

You contend you were set up by the Master at Arms for reasons related to your sexual conduct. You state items were placed in your possession for the purpose of falsely incriminating you. You also state you were harassed, and requested to be removed from service because you no longer had a career. You further state this was a very hard time in your life and you could not admit everything that was going on so you went along with the process. You contend you excelled at your rate until you were harassed, notwithstanding one incident when you went UA to help a fellow soldier. You state you would like to be recognized for your honorable service. You further contend that post-service you have had a very satisfying life and career. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Based on your assertion of a mental health condition, the Board considered the AO dated 23 March 2022 as part of their review. The AO states in pertinent part:

During military service, the Petitioner was diagnosed with a substance use disorder, and he declined treatment. Throughout his disciplinary processing, there were no concerns raised of another mental health condition that would have warranted a referral for evaluation. Unfortunately, the Petitioner has provided no post-service evidence in support of his claims. There are some discrepancies in the record that require clarification. The Petitioner contends that the marijuana was planted by harassing military police, but this is inconsistent with a diagnosis of substance use disorder in service. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) are required to render an alternate opinion.

The AO concluded, "[based on the available evidence, it is my clinical opinion that there is insufficient evidence of a mental health condition other than his in-service diagnosed substance use disorder. There is insufficient evidence that his misconduct could be attributed to a mental health condition other than his substance use disorder."

