



**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: 0699-22

Ref: Signature date

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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 your application was not filed in a timely manner, the statute of limitation 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 June 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, applicable statutes, regulations, and policies, to include the Kurta 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. You were provided an opportunity to comment on the AO, but chose not to do so.

You enlisted in the Navy with a waiver for the following violations: preservice arrest for cultivation of marijuana, possession of paraphernalia, possession of a deadly weapon, and public drunkenness. On 28 May 1982, you began a period of active duty. On 7 December 1982, you received nonjudicial punishment (NJP) for disobeying a lawful order by possessing alcohol beverages at █. You were counseled the same day and advised that failure to take corrective action could result in administrative separation. On 2 August 1983, you received a second NJP for being absent from your appointed place of duty. On the same date, you were counseled for your previous NJPs. You were advised that failure to take corrective action could result in administrative separation. On 9 January 1985, you received a third NJP for being absent from your appointed place of duty. On 9 July 1985, you received a fourth NJP. On 12 July 1985, you

were counseled for frequent involvement with military authorities. You were advised that failure to take corrective action could result in administrative separation. On 25 July 1985, you were referred to a Family Service Center for marriage counseling. On 14 April 1987, a medical officer diagnosed you with marital problems and passive aggressive personality disorder. On 3 December 1987, you were arrested by civil authorities and charged with criminal domestic violence. You were sentenced to confinement for 30 days, and two counts of contempt to court. On 5 January 1988, you were hospitalized in two occasions as a result of suicidal ideation. On 20 January 1988, you began a period of unauthorized absence (UA) which lasted 86 days and resulted in your apprehension by civil authorities. On 2 June 1988, you were convicted by special court martial (SPCM) for a period of UA, disobedience of a superior chief petty officer, and wrongful possession of marijuana while on board of a vessel. You were sentenced a Bad Conduct Discharge (BCD), reduction to the rank of E-1, confinement for 60 days, and forfeiture of pay. On 23 June 1988, a medical officer diagnosed you with personality disorder and marijuana abuse while recommending that you receive substance abuse treatment, which you refused. On 16 February 1989, your SPCM sentence was affirmed. On 8 August 1989, you were discharged with a BCD characterization of service by reason of conviction by SPCM.

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 desire for an upgrade to your discharge and contentions that you returned from deployment, found your wife in bed with another man, and went crazy. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 29 March 2022. The AO stated in pertinent part:

The Petitioner's complete service performance record was not available for review, notably the charges for which he was convicted by special court martial were not found in the record. While in military service, he was diagnosed with a personality disorder, which indicates a lifelong pattern of problematic behavior not suitable to military service. Unfortunately, his personal statement is not sufficiently detailed to establish an alternative clinical diagnosis or a nexus with his misconduct. 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, "[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

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 NJPs and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included using marijuana onboard a

naval vessel. The Board concluded that your conduct showed a complete disregard for military authority and regulations. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant a BCD. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. 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 the 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,

6/28/2022

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Executive Director

Signed by: █