



**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: 1524-22  
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 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 29 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 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 professional dated 10 May 2022, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you did not do so.

You enlisted in the Marine Corps and began a period of active duty on 24 January 1977. You subsequently completed this enlistment with an Honorable characterization of service, on 23 April 1980, and immediately reenlisted. On 9 December 1980, you were convicted by civilian authorities of ■■■■■ for violation of the ■■■■■ Cannabis Control Law. Subsequently, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to civilian conviction, at which time you elected your procedural right to consult with legal counsel and to present your case to an administrative discharge board (ADB). On 22 January 1981, an ADB was convened and

determined that the preponderance of the evidence supported a finding of misconduct and recommended that you be separated from the Marine Corps with a General (Under Honorable Conditions) characterization of service. The staff judge advocate found the proceedings to be sufficient in law and fact to support your administrative separation. The separation authority approved the recommendation and directed your administrative discharge from the Marine Corps. On 26 March 1981, you were discharged from the Marine Corps with a General (Under Honorable Conditions) characterization of service by reason of misconduct due to civilian conviction.

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 to upgrade your discharge character of service and contentions that you were experiencing depression due to the stress of your divorce which contributed to your misconduct, that you “were not given the opportunity for any kind of treatment,” only discharged, and that you were using alcohol and marijuana to self-treat for depression after your divorce prior to your transfer to █. 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 10 May 2022. The AO noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, the Petitioner’s personal statement is not sufficiently detailed to establish a clinical diagnosis or provide 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) would aid in rendering 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 may be attributed to his mental health condition.”

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your civilian conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense in a foreign country. The Board also considered the discrediting effect your conduct had on the Marine Corps. Furthermore, the Board was not persuaded by your arguments and noted your command was under no obligation to send you for either alcohol or drug dependence rehabilitation treatment unless competent medical authority determined you suffered from drug

or alcohol dependence. The Board noted there is no documentation in the record to support either of your assertions of alcohol or drug dependence. Finally, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence that your misconduct may be attributed to your mental health condition. Based on these factors, the Board concluded significant negative aspects of your active service outweighed the positive and continue to warrant a General (Under Honorable Conditions) characterization. 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 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,

7/12/2022

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Executive Director

Signed by: █