



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

██████████  
Docket No: 1562-22  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 20 July 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 SECDEF Memo of 3 Sep 14 (Hagel Memo), USD Memo of 25 Aug 17 (Kurta Memo), and USD Memo of 25 July 18 (Wilkie Memo). The Board also considered an advisory opinion (AO) from a qualified mental health professional dated 9 May 2022. Although you were provided an opportunity to comment on the AO, you did not do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You entered active duty with the Navy on 5 October 1988. On 5 July 1989, you received non-judicial punishment (NJP) for absence from appointed place of duty, failure to obey a lawful order, use of marijuana, sleeping on post, and leaving your post without being properly relieved. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to commission of a serious offense. After waiving your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to commission of a serious offense with an Other Than

Honorable (OTH) characterization of service. The SA approved the CO's recommendation and, on 30 August 1989, you were so discharged.

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 and contentions that you incurred a mental health condition during military service, that your mental health condition contributed to your misconduct, that you were discharged for sleepwalking, and since your discharge you have been a good citizen with a family. For purposes of clemency consideration, the Board noted you provided an advocacy letter but no supporting documentation describing post-service accomplishments.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 9 May 2022. The AO stated in pertinent part:

While it does appear that Petitioner was evaluated for sleepwalking, a condition experienced preservice, there is no evidence that he was diagnosed with another 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. Unfortunately, he has provided no medical evidence to support his claims. His personal statement is not sufficiently detailed to establish a clinical diagnosis or provide a nexus with his misconduct. Additionally, it is difficult to attribute his misconduct to any parasomnia, as he was not supposed to be sleeping at those times cited in the NJP. 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 a mental health condition."

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your NJP, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. In addition, the Board noted the brevity of your active duty service and found no evidence that your service was otherwise exceptional or so meritorious to support special consideration. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition and there is no evidence to support your contention of being discharged for sleepwalking. Rather, the Board noted that you were, in fact, discharged for commission of a serious offense and drug abuse. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization of service. While the Board commends your post-discharge good character, after applying liberal consideration, the Board did not find evidence of an error

