



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

██████████  
Docket No: 1896-22  
Ref: Signature Date

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██  
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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 you did not file your application in a timely manner, the Board waived the statute of limitation 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 17 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, and applicable statutes, regulations, and policies, to include to 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) of a qualified mental health provider, which was previously provided to you. You were afforded an opportunity to submit a rebuttal, but did not do so.

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

You enlisted in the Navy with a pre-service history of marijuana use, specifying that you had “no intentions to use again,” and began a period of active service on 29 June 1993. You were transferred, on 18 October 1993, to the Transient Personnel Unit pending legal or administrative action and, on 22 March 1994, charges against you were referred for alleged marijuana use. On

29 March 1994, you were found guilty before Special Court-Martial (SPCM) for violating two specifications of Article 112a by wrongful use of marijuana, and your adjudged sentence included a Bad Conduct Discharge (BCD). Following completion of appellate review of your trial, your punitive discharge was affirmed and you were discharged from active duty on 29 March 1995.

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, your apology for your in-service misconduct, and your contentions that you have maintained a clean criminal record for nearly 30 years since your discharge but made the mistake of using marijuana due to trauma and anxiety after being robbed at gunpoint following recruit training. For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments and advocacy letters.

Because you contend a mental health condition, the Board also considered the AO, which noted in pertinent part:

The Petitioner's service records were poorly legible and incomplete. There is no information regarding the court martial charges which would have resulted in a bad conduct discharge. Among available records, there is no evidence that he received a mental health diagnosis during military service, or that concerns were raised of a mental health condition that would have warranted a referral for evaluation throughout his disciplinary processing. He has provided no medical evidence in support of his claims. 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 diagnosis of PTSD that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to PTSD."

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 SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. The Board noted that your adjudged BCD for marijuana use, which your available records indicate occurred after recruit training and while still in an entry level status, ostensibly reflects aggravating factors accounted for during sentencing which were not available for the Board to evaluate against the post-discharge you provided for review. Additionally, the Board concurred with the AO that there is insufficient evidence that your misconduct may be attributed to PTSD. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant a BCD. While the Board commends your post-discharge good character, 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

