



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

█  
Docket No: 2507-22  
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 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 18 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 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

During your enlistment processing you disclosed having used/experimented with marijuana. You enlisted in the Navy and began a period of active duty on 26 April 1983. On 2 May 1983, you were briefed on the Navy's drug and alcohol abuse policy. On 23 August 1983, you received your first nonjudicial punishment (NJP) for willfully destroying a window, assault of a fellow Sailor, and drunk and disorderly conduct. You were counseled that further deficiencies in your performance and/or conduct may result in disciplinary actions and in processing for administrative discharge. On 25 March 1985, you received a second NJP for the wrongful use of

cocaine. Subsequently, on 18 February 1986, you received a third NJP for another charge of the wrongful use of cocaine. The same day, you were also notified of your commanding officer's (CO) intent to recommend that you be discharged for misconduct due to drug abuse and commission of a serious offense (COSO), at which time you waived your right to have consult with counsel and have your case heard before an administrative discharge board. On 24 February 1986, your CO forwarded his recommendation to the separation authority recommending you be discharged with an Other Than Honorable (OTH) characterization of service. On 28 February 1986, the separation approved your separation and directed you be discharged with an OTH for drug abuse (use). On 3 March 1986, you were so discharged.

The Board carefully considered all potentially mitigating factors in your petition 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: (1) you served honorably until you failed your urinalysis, which happened while you were living off base and (2) your belief that your misconduct was attributed to PTSD that was compounded in the Navy. 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 that you suffered from PTSD as a result of military service, which might have mitigated your discharge character of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with the AO. The AO states in pertinent part:

During military service, he was evaluated and no mental health diagnosis was assigned. This absence of diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. Unfortunately, he has provided no medical evidence in support of his claims. His 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 diagnosis of PTSD that could 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 repeated misconduct, as evidenced by your NJPs, to include; the destruction of government property, assault, drunk and disorderly conduct, and your drug use, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct that included two separate drug offenses. The Board also considered the likely negative effect your misconduct had on the good order and discipline of the command. Further, 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 an OTH 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 that 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,

8/5/2022



Executive Director

Signed by: █