



**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: 2680-22

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 12 August 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. You were afforded an opportunity to submit AO rebuttal materials for consideration and chose not to do so.

You originally enlisted in the Navy and commenced active duty on 14 June 1979. Your pre-enlistment physical examination, on 10 February 1979, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. You expressly endorsed "No" to now having or ever having "depression or excessive anxiety," and "nervous trouble of any sort" on your medical history. Between 6 July and 18 August 1982, you completed Level III inpatient rehabilitation treatment in █ where you were diagnosed with alcohol dependence/alcoholism.

Your end of enlistment/release from active duty physical examination, on 13 August 1983, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

You again expressly endorsed “No” to now having or ever having “depression or excessive anxiety,” and “nervous trouble of any sort” on your medical history. On 20 September 1983, you reenlisted.

On 9 February 1984, you received non-judicial punishment (NJP) for the wrongful use of a controlled substance (marijuana). You did not appeal your NJP. On 21 June 1984, you again received non-judicial punishment (NJP) for the wrongful use of a controlled substance (marijuana). You did not appeal your second NJP.

Based on your misconduct, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. You waived your right to request an administrative separation board. In the interim, your discharge physical examination, on 19 July 1984, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. For the third time you again endorsed “No” to now having or ever having “depression or excessive anxiety,” and “nervous trouble of any sort” on your medical history. Ultimately, on 23 July 1984, you were discharged from the Navy for misconduct with an under Other Than Honorable (OTH) conditions characterization of service and assigned an RE-4 reentry code.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 24 June 2022. The Ph.D. stated in pertinent part:

During military service, the Petitioner was diagnosed with alcohol use and substance use disorders. Problematic alcohol use and substance use are incompatible with military readiness and discipline and considered amenable to treatment, depending on the individual’s willingness to engage in treatment. There is no evidence that he was unaware of his misconduct or not responsible for his behavior. He has provided medical evidence of other mental health conditions that are temporally remote to his military service and do not appear to be related. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms 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 Ph.D. concluded, “[b]ased on the available evidence, it is my considered 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.”

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that: (a) your alcohol and drug abuse was a form of controlling your depression and anxiety, (b) you have suffered from depression and anxiety your entire life, (c) your father was a

chronic alcoholic and you still suffer from depression and anxiety, and (d) you have been clean and sober for thirty-three years. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

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, outweighed these mitigating factors. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. The Board also took notice of the stark disparity in your contentions that you have suffered from both depression and anxiety your whole life, yet on three separate occasions during your active duty service you expressly denied ever having depression and anxiety. Moreover, even if the Board assumed that your drug-related misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. Moreover, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational, employment, or military enlistment opportunities. Lastly, the Board determined that illegal drug use by a Sailor is contrary to Navy core values and policy, renders such Sailors unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. The Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. As a result, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard, the Board concluded that your serious misconduct clearly merited your receipt of an OTH. Even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that insufficient evidence of an error or injustice exists to 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,

8/16/2022

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Executive Director

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