



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

██████████  
Docket No: 3998-22  
7421-17  
11592-88  
Ref: Signature Date



Dear ██████████:

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 29 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health provider and documents submitted in rebuttal.

You enlisted and began a period of active duty in the Navy Reserve on 11 September 1985. As noted in a memorandum signed by your commanding officer, you tested positive for cocaine use on 16 July 1986 and 25 September 1986. On 6 November 1986, you received nonjudicial punishment (NJP) for the wrongful use of drugs in violation of Article 112a, Uniform Code of Military Justice (UCMJ). You were in an unauthorized absence (UA) status for seven hours on 5 January 1987. On

12 January 1987, you were notified of administrative separation processing by reason of misconduct due to commission of a serious offense and misconduct due to drug abuse. You consulted with counsel and requested an administrative discharge board (ADB). On 22 January 1987, you received a second NJP for being UA and drunk and disorderly in violation of Articles 86 and 134, UCMJ. The ADB convened on 12 March 1987 and unanimously substantiated that the misconduct had occurred and recommended your separation with an Other Than Honorable (OTH) characterization of service. On 19 March 1987, you received a third NJP for three specifications of UA and missing ship's movement in violation of Articles 86 and 87, UCMJ. You were discharged on 24 April 1987 with an OTH characterization of service.

You previously applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade but were denied on 2 March 1988. The NDRB determined your discharge was proper as issued. You subsequently applied to this Board on three prior occasions but were denied on 31 January 1989, 17 December 2017, and 18 January 2019.

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 suffered from Schizoaffective Disorder while in-service and that the mental health disorder caused you to commit several acts of misconduct which led to your discharge. For purposes of clemency consideration, the Board considered an advocacy letter from your previous case but noted you provided no supporting documentation describing post-service accomplishments.

Since you contend a mental health condition may be related to the circumstances of your case, the Board also relied on the AO dated 13 June 2022. The AO stated 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 that would have warranted a referral for evaluation for a mental health evaluation. The absence of a substance use disorder diagnosis was based on the information that he reported to the clinician and his observed behavior during service. There is no evidence he was unaware of his misconduct or not responsible for his actions. Post-service, he has a diagnosis of a mental health condition that is temporally remote to his military service. Although some clinicians have opined that he was experiencing his mental health condition during his military service, the evidence contemporary to his military service indicates that he was "a good performer...who requires little supervision" in the performance of his duties. Petitioner further reported successfully obtaining employment following his discharge, where he was noted as performing "beyond routine expectations...[and] reliable."

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 could be attributed to a mental health condition.”

In response to the AO, you provided additional arguments concerning the application of liberal consideration in your case based on your medical evidence.

Based upon this review, the Board concluded that the potentially mitigating factors in your case were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your three NJPs and ADB, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative effect it had on the good order and discipline of your command. Further, in its deliberations, the Board considered your civilian psychiatrist’s letter but concurred with the AO that there was insufficient evidence to establish that you suffered from a mental health condition while in-service or that your misconduct could be attributed to a mental health condition. In particular, the Board noted the conclusory nature of your psychiatrist’s letter. 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,

9/12/2022

██████████

Executive Director

Signed by: ██████████