



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

██████████  
Docket No: 5261-22

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 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 2 November 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 professional, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 24 March 1993. On 30 November 1995, you were convicted at a summary court martial (SCM) for two specifications of unauthorized absence (UA), wrongful use of marijuana, and wrongful induction of marijuana onboard a naval vessel. On 14 December 1995, you were notified of the initiation of administrative separation proceedings by reason of wrongful use, and introduction of a controlled substance. On the same day, you waived your right to consult with counsel. On 27 December

1995, your commanding officer recommended your separation from naval service with an Other Than Honorable (OTH) character of service by reason of misconduct due to drug abuse. On 2 January 1996, the separation authority approved and directed your discharge. On 8 January 1996, you began a period of UA. Subsequently, on 16 February 1996, you were discharged in absentia, with an OTH character of service by reason of misconduct due to drug abuse.

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. The Board considered your contention your application for officer candidate school was denied, after which you “made a mistake with marijuana.” You assert that you have since been successfully employed since your discharge with no criminal record.

As part of the Board’s review, a qualified mental health professional reviewed your request and provided the Board with an AO on 12 September 2022. The AO noted 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, before or during military service. He has provided post-service medical evidence that is temporally remote to his military service, which lists an onset of a mental health condition (depression) 15 years prior to his military service, but provides no information regarding symptoms or impairment during military service. Unfortunately, his personal statement and available records are not sufficiently detailed to establish clinical symptoms during military service or provide a nexus with his misconduct. Additional records (e.g., in-service or 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, “it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to a mental health condition.”

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness misconduct and the fact it included drug offenses. 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. Further, the Board noted the likely negative impact your conduct had on the good order and discipline of the navy’s mission when you introduced drugs onboard a naval installation. Finally, the Board concurred with the AO that there is insufficient evidence of a MH diagnosis that may be attributed to military service, and there is insufficient evidence your misconduct could be attributed to a MH diagnosis. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization. While the Board commends your post-discharge accomplishments and good character, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error

