



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

■  
Docket No: 5707-22  
Ref: Signature Date



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 5 December 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 6 October 2022. Although you were provided an opportunity to respond to the AO, you chose not to do so.

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

You enlisted in the U.S. Navy and began a period of active duty on 10 March 1975. On

14 November 1975, you received your first nonjudicial punishment (NJP) for possession of marijuana. On 12 December 1975, you received a second NJP for failure to go to your appointed place of duty. Subsequently, you were recommended for Naval Drug Rehabilitation Center (NDRC) treatment due to your heavy drug usage that commenced around age 13. On 19 February 1976, you received a third NJP for failing to provide a urine sample. Despite your misconduct and previously diagnosed personality disorder, after completing rehabilitation treatment, the Chief of Naval Personnel (CNP) concurred with your command's recommendation that you be retained in the Navy. However, you were issued a page 13 administrative counseling advising you that further misconduct may result not only in disciplinary action but in the processing for administrative discharge.

On 30 July 1976, you received a fourth NJP for missing movement and for a period of unauthorized absence (UA). As a result, on 19 October 1976, you were notified of your pending administrative separation by reason for unsuitability due to your diagnosed personality disorder, at which time you waived your right to consult with military counsel. Ultimately, on 22 October 1976, you were discharged with a General (Under Honorable Conditions) (GEN) characterization of service.

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 to upgrade your discharge and contentions that you incurred PTSD and other mental health concerns from military sexual trauma. You argue that the Navy inappropriately handled a sexual assault against you and, instead, processed you for separation. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

Based on your assertion that you incurred PTSD and other mental health concerns during military service, which might have mitigated the circumstances that led to your discharge characterization of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with the AO. The AO stated in pertinent part:

During military service, he was diagnosed with a personality disorder. The 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 as documented in his service records. His in-service misconduct appears to be more consistent with his diagnosed characterological traits, rather than evidence of a diagnosis of PTSD or another mental health condition incurred in or exacerbated by military service. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms of another mental health condition. 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, “it is my considered clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD or another mental health condition, other than his diagnosed personality disorder.”

After thorough 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 making this finding, the Board considered the seriousness of your misconduct and the fact it included multiple drug offenses. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. Further, the Board considered that you already received a large measure of clemency when the Navy chose to process you for your personality disorder instead of misconduct. Additionally, the Board concurred with the AO that there is insufficient evidence that your misconduct may be attributed to PTSD or another mental health condition. Finally, the Board found that you provided no evidence to substantiate your contentions. As a result, the Board concluded significant negative aspects of your active service outweighed the positive aspects and continue to warrant a GEN characterization. Even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting an upgraded characterization of service as a matter of clemency or equity. 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,

1/3/2023

