



**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: 5837-22

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 14 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional and your response to the AO.

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 Navy and began a period of active duty on 21 August 1968. On 20 July 1970, you were notified that you were being recommended for administrative discharge from the Navy due to unfitness because of your wrongful use of marijuana. You were advised of, and elected your procedural right, to consult with military counsel, and having consulted with

military counsel, you elected to submit a statement on your behalf and waived your right to present your case to an administrative discharge board (ADB). Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with a General (Under Honorable Conditions) characterization of service. In his comments, the CO noted your repeated use of marijuana, “thus rendering early separation essential.” On 19 August 1970, the Chief of Naval Personnel (CNP) directed you be separated from the naval service with an Undesirable (Other Than Honorable) discharge by reason of unfitness. However, CNP desired that the execution of your OTH discharge be held in abeyance by the CO pending further observation of your conduct and fitness for retention in the naval service. CNP further stated that if at any time during your probationary period of twelve-month or the expiration of your active obligation service, whichever is sooner, you violate any of the terms presented to you the CO is authorized to execute the OTH discharge. On 4 September 1970, after consulting with military counsel and advised of the implications concerning an OTH discharge, you requested that the OTH awarded by CNP be executed, and that the twelve-month probation period be vacated. As a result, the SA directed your administrative discharge from the Navy but granted you a General (Under Honorable Conditions) (GEN) characterization of service. On 14 September 1970, you were discharged from the Navy with a GEN characterization of service by reason of unfitness.

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 change your discharge character of service and contention that you incurred mental health concerns after you “fell into the wrong crowd and began smoking marijuana.” You further contend that you believe that if you had access to mental health and addiction services, you would never have accepted a GEN discharge. For purposes of clemency and equity consideration, the Board noted you provided supporting documentation describing post-service accomplishments but no advocacy letters.

As part of the Board’s review, a qualified mental health professional reviewed your request and provided the Board with an AO on 24 October 2022. The AO noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, although he was evaluated on two occasions, and there is behavioral evidence of a possible substance use disorder. There is no evidence he was unaware of his misconduct or not responsible for his behavior. He has provided no post-service evidence of a diagnosis of a mental health condition. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., 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 may be attributed to a mental health condition.”

In response to the AO, you provided a personal statement that supplied additional clarification of the circumstances of your case with excerpts from the Centers for Disease Control and Prevention.

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 wrongful use of a controlled substance, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved multiple drug offenses. The Board determined that illegal drug use by a Sailor is contrary to Navy core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. Additionally, 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. Further, the Board considered the likely negative effect your misconduct had on the good order and discipline of your command. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence your misconduct may be attributed to a mental health condition. As noted in the AO, there is no evidence that you were unaware of your misconduct or not responsible for your behavior. Finally, the Board noted you were given an opportunity to earn a better characterization of service when you were retained in the Navy by CNP but elected to waive the probationary period in order to be administratively discharged. In fact, the Board determined you already received a large measure of clemency when CNP granted you a GEN characterization despite your decision to forego the probationary period. As a result, the Board determined significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN characterization. Therefore, while the Board commends your post-discharge accomplishments, 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,

1/5/2023

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Executive Director  
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