



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

█  
Docket No: 5843-22

Ref: Signature Date

█  
█  
█

Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 19 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 the 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 to 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) of a qualified mental health provider which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the U.S. Marine Corps and began a period of active duty on 6 March 1970. Seven month later, you received nonjudicial punishment (NJP) for misbehavior of a sentinel. On 4 June 1971, you received a second NJP for two specifications of unauthorized absence (UA) totaling a period of 11 days. On 24 May 1972, you received a third NJP for another period of UA, which lasted less than 24 hours. As a result, you were counseled regarding retention with warnings that further misconduct could result in an adverse administrative discharge. However, one month later, on 15 June 1972, you were found guilty at a summary court-martial (SCM) of a 15-day UA and awarded confinement at hard labor for 20 days and to be reduced in rank (RIR) to E-1 (your RIR was suspended for six months). Just two months later, on 31 August 1972, you

were found guilty at a second SCM of three specifications of failure to go to your appointed place of duty and sentenced to confinement at hard labor for 10 days, hard labor without confinement for 30 days, and to forfeit \$100.00 pay per month for one month. Your confinement at hard and forfeitures were suspended for four months. On 2 October 1972, you were found guilty at a third and final SCM of a period of UA which lasted three days and sentenced to confinement at hard labor for 30 days and to forfeit \$100.00 pay per month for one month. However, any confinement in excess of 15 days and your forfeitures sentenced were again suspended for three months.

On 24 October 1972, after you requested a drug exemption, you were found to be psychologically drug dependent and your drug exemption request was denied as you were apprehended for marijuana possession. On 13 November 1972, clinical records document you were drug dependent for marijuana, LSD and cocaine, and experimenting with heroin, amphetamines and barbiturates. You were subsequently placed in Project Therapy Track, a drug rehabilitation program. Subsequently, on 26 February 1973, clinical records document your termination from the aforementioned program for various reasons, to include your lack of motivation, poor judgment and inability to benefit from the program. Ultimately, you were recommended for an administrative discharge.

On 21 March 1972, you were notified of your pending administrative discharge for misconduct as a result of unfitness/frequent involvement with military authorities, at which time you elected your right to consult with military counsel and to have your case heard before an administrative discharge board (ADB). On 10 May 1973, an ADB found, by a vote of 3 to 0, that you committed misconduct and recommended you be discharge with an Other Than Honorable (OTH) characterization of service. On 23 May 1973, a staff judge advocate review of your case found your proceedings were sufficient in law and fact. On 30 May 1973, the separation authority directed you be discharged with an OTH for unfitness. On 6 June 1973, you were so discharged.

You previously applied to the Naval Discharge Review Board (NDRB) contending that you learned a valuable lesson and inferring your disciplinary problems were a result of immaturity. On 12 February 1975, the NDRB denied your application.

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 your contentions that, (1) you incurred PTSD and other mental health concerns in military service and (2) you should have received a General (Under Honorable Conditions) characterization at the time of your discharge but chose not to remain on active duty for another six months due to the incident which led to your AWOL and drug use. For purposes of clemency and equity consideration, the Board noted you provided medical documents but no supporting documentation describing post-service accomplishments or advocacy letters.

Because you contend that post-traumatic stress disorder (PTSD) or another MH condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

During military service, he was diagnosed with a personality disorder and a substance use disorder. Substance use is incompatible with military readiness and

discipline, and there is no evidence he was unaware of his misconduct or not responsible for his behavior. A personality disorder indicates a lifelong pattern of unhealthy behaviors and thinking patterns. The Petitioner has provided post-service evidence of trauma-related mental health condition that he attributes to military service. However, his report is temporally remote to his military service, and his misconduct seems to be more likely related to the characterological traits and problematic substance use that were identified during military service, rather than a temporally remote mental health diagnosis. There is no evidence of a diagnosis of PTSD attributed to military service. There is insufficient evidence his other post-service mental health diagnoses are related to military service. Additional records (e.g., records describing his diagnoses, 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 PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence his misconduct may be attributed to PTSD or another mental health condition, other than the personality and substance use disorders identified in service.”

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 three NJPs, three SCMs, and rehabilitation failure, 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 found that your conduct showed a complete disregard for military authority and regulations. Finally, the Board concurred with the AO regarding the lack of evidence supporting your contended PTSD or other mental health conditions which were temporally remote and could not be attributed to your military service. Based on these factors, the Board concluded the evidence you submitted in mitigation was insufficient to outweigh the severity of your misconduct. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH 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 the 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 is attached 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,

1/12/2023

█

Executive Director

█