



**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: 5966-22  
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 2 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider and your response to the AO.

You enlisted in the Navy and entered active duty on 1 August 1980. Your pre-enlistment physical examination, on 29 December 1979, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. You disclosed pre-service marijuana use on your enlistment application.

On 27 October 1981, you received non-judicial punishment (NJP) for insubordinate conduct and for failing to obey a lawful order. You did not appeal your NJP. On 20 July 1982, you received NJP for two separate specifications of unauthorized absence (UA). You did not appeal your NJP.

On 27 August 1982, a NAVREGMEDCEN message indicated you tested positive for phencyclidine (aka PCP or “angel dust”). You were referred to the Counseling and Assistance Center and recommended for Level II treatment. However, there is nothing in your service record to indicate that any treatment occurred. You did not receive any disciplinary action for your drug abuse.

On 24 September 1982, you received NJP for sleeping in another man’s assigned rack. You did not appeal your NJP. On 11 October 1982, your command issued you a “Page 13” counseling sheet (Page 13) expressly warning you that any further misconduct may result in disciplinary action or processing for an administrative separation. You did not submit a Page 13 rebuttal statement.

On 4 March 1983, you received NJP for UA. You did not appeal your NJP. On 15 April 1983, you received NJP for UA. You did not appeal your NJP.

On 22 December 1983, you received NJP for the wrongful use of marijuana. You did not appeal your NJP.

On 6 January 1984, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to a pattern of misconduct, and misconduct due to drug abuse. You consulted with counsel and elected your right to present your case to an administrative separation board (Adsep Board).

On 12 January 1984, an Adsep Board convened to hear your case on board the █. At the Adsep Board you were represented by a Navy Judge Advocate, and you testified under oath. Following the presentation of evidence and witness testimony, the Adsep Board members unanimously determined that you committed the misconduct as charged. Subsequent to the unanimous misconduct finding, the Adsep Board members recommended that you be separated from the naval service with an Other Than Honorable (OTH) characterization of service. Ultimately, on 21 February 1984, you were discharged from the Navy for misconduct with an OTH characterization of service and assigned an RE-4 reentry code.

On 8 April 1986, the Naval Discharge Review Board denied your initial application for discharge upgrade relief.

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 for a discharge upgrade and contentions that: (a) your misconduct was linked to a traumatic event experienced on board your ship between July and August 1981, (b) you suffered a TBI during a missile launch on board the

ship that went awry, (c) you had no misconduct in your service record until after your TBI, and (d) you were reprimed against after you testified regarding a missile launch “gone bad.” For purposes of clemency and equity consideration, the Board noted you provided a personal statement but no supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 18 October 2022. The Ph.D. stated in pertinent part:

During military service, he was evaluated and diagnosed with a substance use disorder, without dependence. This diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed. There is no evidence that he was diagnosed with another mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Post-service, he provided evidence of a diagnosis of PTSD that is temporally remote to his military service, and appears unrelated. There is no available medical evidence to support his TBI claims. Unfortunately, his personal statement is not sufficiently detailed to establish a nexus with his misconduct, as his pre-service marijuana use appears to have continued in service. Additional records (e.g., in-service or post-service medical records describing the Petitioner’s diagnosis, symptoms, and their specific link to his performance) would aid in rendering an alternate opinion.

The Ph.D. concluded, “it is my considered clinical opinion there is insufficient evidence of TBI, a diagnosis of PTSD, or another mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to TBI, PTSD or another mental health condition.”

In response to the AO, you submitted personal statements that provided additional information regarding the circumstances of your case.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence of any nexus between any TBI or mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such TBI or mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to a TBI and/or mental health-related conditions or symptoms. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your drug-related misconduct far outweighed any and all mitigation offered by

such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. 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. 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. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. Moreover, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard, the Board concluded that your misconduct and disregard for good order in discipline clearly merited your receipt of an OTH. 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,

12/15/2022

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