



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

█  
Docket No. 6061-22

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 19 May 2023. 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. Although you were afforded an opportunity to submit an AO rebuttal for consideration, you chose not to do so.

You enlisted in the U.S. Navy and entered active duty on 29 April 1985. Your pre-enlistment physical examination, on 19 April 1985, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. As part of your enlistment application you acknowledged and signed the "Drug and Alcohol Abuse Statement of Understanding" (Drug SOU). You also disclosed pre-service marijuana use and a pre-service aiding/abetting a DWI offense. On 2 May 1985, at initial recruit training you acknowledged being briefed on: (a) Navy policy on Drug and Alcohol Abuse, (b) legal consequences of illicit drug use, (c) effects of drug

and alcohol abuse on discipline and combat readiness, (d) consequences of drug trafficking, (e) physical and psychological effects of drug and alcohol abuse, and (f) the Navy's urinalysis screening program. You further represented that you read and understood the Drug SOU. On 23 October 1985, you were dropped from your guaranteed/assigned "A" School training for non-academic reasons. On 25 November 1985, you reported for duty on board the ██████████ ) in ██████████.

On 30 December 1985, you received non-judicial punishment (NJP) for an assault. You did not appeal your NJP. On 26 January 1987, you received NJP for resisting apprehension and drunk and disorderly conduct. You did not appeal your NJP. On 28 January 1987, your command issued you a "Page 13" retention warning (Page 13) documenting your discreditable involvement with military authorities. The Page 13 expressly warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. You did not submit a Page 13 rebuttal statement.

On 18 March 1987, you received NJP for failing to obey a lawful order. You did not appeal your NJP. On the same day, your command temporarily decertified you from the Personnel ██████████ and for assignment to nuclear weapons positions. On 21 March 1987 your command issued you a Page 13 documenting your NJP and for being identified as having a drinking problem. The Page 13 expressly warned you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. You did not submit a Page 13 rebuttal statement.

On 22 July 1987, the ██████████ evaluated you and recommended you to receive Level II alcohol rehabilitation treatment. On 24 August 1987, you began Level II treatment. However, your treatment was terminated prior to completion, on 14 September 1987, due to an unauthorized absence (UA) from the program and for failing a fitness for duty examination. The ██████████ recommended you for Level III inpatient rehabilitation treatment.

On 30 October 1987, you received NJP for two separate UA specifications and for disobeying a lawful order or regulation. A portion of your NJP was suspended. You did not appeal your NJP.

On 10 November 1987, your command vacated and enforced the suspended portion of your NJP due to continuing misconduct. On 4 December 1987, you received NJP for the wrongful use of a controlled substance (cocaine). You did not appeal your NJP.

On 4 December 1987, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to drug abuse, misconduct due to a pattern of misconduct, and alcohol abuse rehabilitation failure. On 15 December 1987, you consulted with counsel and waived your rights to submit statements and to request an administrative separation board.

In the interim, your separation physical examination, on 13 January 1988, and self-reported medical history both indicated no psychiatric or neurologic conditions or symptoms. You

specifically stated, "I am in good health and taking no medications," on your medical history. On 25 January 1988, you received NJP for UA, drunkenness, and for disobeying a lawful written order. You did not appeal your NJP. On 29 January 1988, you waived your right to request 30-day VA inpatient rehabilitation treatment at a VA hospital nearest your home of record or residence. Ultimately, on 29 January 1988, you were discharged from the Navy for misconduct with an under Other Than Honorable conditions (OTH) characterization of service and assigned an RE-4 reentry code.

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) you have been diagnosed with Huntington's Disease (HD) around 2015 and believed this played a huge part in your conduct and actions prior to knowing this disease existed, (b) your actions were uncontrolled and irrational at times but you did not know why, (c) you resulted in using alcohol to self-medicate your depression, (d) post-service you continued to use alcohol for years but then finally became clean and have remained alcohol free since 1991, (e) you are now unable to work, and your HD is a hardship because it's gotten progressively worse and has affected your walking, speech, and cognitive skills, and (f) you desire veterans' benefits. The Board noted for clemency and equity purposes, you submitted supporting post-service medical documentation.

As part of the review process, the BCNR Physician Advisor, who is also a medical doctor (MD) and a Fellow of the American Psychiatric Association, reviewed your contentions and the available records and issued an AO dated 12 April 2023. The MD stated in pertinent part:

Petitioner was appropriately referred for alcohol abuse and properly evaluated during his enlistment. His substance use disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose to the substance abuse clinicians, and the psychological evaluation performed. Substance use and problematic alcohol use are incompatible with military readiness and discipline and do not remove responsibility for behavior. There is no evidence that Petitioner 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 other than his substance abuse disorders. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for medical or mental health evaluation beyond those for his substance abuse condition. Post-service, the Petitioner has been diagnosed with Huntington's Disease (2015, 27 years post-discharge), which is temporally remote to military service and appears unrelated. There is no evidence in the medical record of signs or symptoms indicative of Huntington's Disease during his enlistment. Petitioner has provided no medical evidence in support of his claims of in-service manifestations of Huntington's Disease. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. 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.

Of note, Huntington's Disease typically manifests at 30-35 years of age and progresses for 10-25 years until death. There is a juvenile strain of Huntington's Disease, which can manifest in adolescence or early adulthood, but is rapidly progressive with death occurring typically within 10 years. Petitioner's history strongly indicates he did not suffer from Juvenile Huntington's Disease (in part as he is still alive at age 57), and that his history of progressive movement, gait, and cognitive symptoms since his 2015 diagnosis, reflects a more usual onset and progression of the disease. Review of Petitioner's in-service medical record did not find any medical evidence of manifestations of Huntington's Disease. His disciplinary issues are more appropriately attributed to his personal behaviors and diagnosed substance abuse disorder.

The MD concluded, "it is my considered medical opinion there is insufficient evidence of post-discharge diagnosis of Huntington's Disease, or any other mental health condition may be attributed to military service. There is insufficient evidence his misconduct could be attributed to Huntington's Disease, or another mental health condition other than his in-service diagnosed alcohol use disorder."

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 HD, mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such HD 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 HD or any mental health-related conditions or symptoms. Moreover, even if the Board assumed that your misconduct was somehow attributable to HD or any mental health conditions, the Board unequivocally concluded that the severity of your 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 observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 2.34 in conduct. Navy regulations in place at the time of your discharge recommended a minimum trait average of 3.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your cumulative misconduct was not minor in nature and that your conduct marks during your active



duty career were a direct result of your serious misconduct and further justified your OTH characterization.

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 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. 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 discharge. 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 granting you the relief you requested or granting relief 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,

5/23/2023

