



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

██████████  
Docket No. 6692-22  
Ref: Signature Date

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████████████████████

Dear ██████████

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 14 April 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 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 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. Although you were afforded an opportunity to submit a rebuttal to the AO, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 2 October 1978. As part of your enlistment processing, you denied any pre-service drug use. You deployed to Southeast Asia in 1980, for which you received a Humanitarian Service Medal for your participating in the rescue of Vietnamese refugees, including 19 children, who had been adrift at sea for 12 days. Shortly thereafter, on 9 September 1980, you were subject to nonjudicial punishment (NJP) for wrongful use of marijuana. You continued to serve without incident, completing an initial period of Honorable service on 27 September 1982. You immediately reenlisted on 28 September 1982 and commenced another period of active duty.

The following year, on 3 December 1983, you were subject to NJP for violation of Article 134 of the Uniform Code of Military Justice due to knowing and wrongful use of marijuana. You were administratively counseled and issued warnings regarding retention and the potential for involuntary separation if you continued to use controlled substances. An initial substance abuse report expressed a favorable opinion of your potential for future service pending completion of rehabilitation treatment and your avoidance of future drug involvement. Of note, during your substance use evaluation interview, you admitted to pre-service drug use.

You participated in level I rehabilitation treatment and were subject to routine, weekly urinalysis testing from December of 1983 through 16 May 1984. During this time, the Petty Officer Quality Control Review Board issued you a letter notifying you of substandard performance, and you were administratively counseled that further reenlistment or extension would require approval from the Commander, ██████████. You completed your period of routine testing and, on 11 August 1984, were medically evaluated, and referred to psychotherapy for provisional diagnoses of stress and anxiety, although your records do not indicate a follow-up appointment. During this evaluation, you reported “increasing marijuana use of the past 6 month[s] ... in response to stress ... both at work and with [your] family.” The report noted that you used marijuana “as an escape mechanism.”

You were subject to a second NJP during your second period of enlistment, on 23 August 1984, for a violation of Article 112a, again for knowing and wrongful use of marijuana. Subsequently, you were notified of administrative discharge procedures by reason of misconduct due to drug abuse, and you elected to waive your right to a hearing before an administrative board. Having noted in a substance abuse message that your third drug offense reflected lack of potential for future service, your commanding officer recommended your discharge under Other Than Honorable (OTH) conditions. Ultimately, you were discharged on 30 September 1984 for drug abuse with an OTH.

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 final discharge to “Honorable” and your contentions that you have rehabilitated yourself and corrected your life. For purposes of clemency and equity consideration, the Board noted you provided documentation describing post-service accomplishments.

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

During military service, he was evaluated and diagnosed with a substance use disorder. Substance use is incompatible with military readiness and discipline and does not remove responsibility for behavior. 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. He has provided no post-service medical evidence in support of his claims. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, given his pre-service substance use behavior that appears to have continued in service. Additional records (e.g., post-service mental health

records describing the Petitioner's diagnosis, history, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD. There is insufficient evidence to attribute his misconduct to PTSD."

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 during your second enlistment, 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. 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 concurred with the AO that there is insufficient evidence that your drug abuse might be mitigated by your contended PTSD. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board commends your post-discharge accomplishments and carefully considered the evidence you submitted in mitigation, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

4/24/2023

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