



**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. 6808-22  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 20 January 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 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 to the AO, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Navy and began a period of active duty on 25 September 1981. You served approximately 6 months before your first nonjudicial punishment (NJP) for a violation of Article 86 due to absence without authority. After serving a period of restriction, you again absented yourself without authority later than month and received a second NJP for that offense, as well as for a violation of Article 87 due to missing movement. As a result, you were administratively

counseled regarding retention with warnings that future misconduct might result in adverse action. Your third NJP included three additional specifications of absence from your appointed place of duty and an additional offense for violating Article 92 due to dereliction of duty in completing your work assignments.

Based on comments later made by your commanding officer, you proffered an explanation for your tardiness as being attributable to an alcohol use problem, and you were assigned to the alcohol safety program. However, after missing your counseling meetings for the program, you subsequently stated that you did not have a problem with alcohol use and had only stated such to “get out of trouble” during your NJP. You later received a fourth NJP for two additional unauthorized absences, to include absence from counseling, and another Article 92 violation for dereliction of your duties as firewatch.

As a result, you were notified of administrative separation for the reason of misconduct due to frequent involvement of a discreditable nature with military authorities for repeated minor offenses within a 1-year period. You requested a hearing before an administrative separation board, which occurred on 20 October 1982. After consideration of all evidence presented at the hearing, the members made specific findings that you required constant supervision, left your assigned jobs without authority, were repeatedly late for quarters, had an unsatisfactory uniform appearance, and that you committed the misconduct that supported the basis for separation. They recommended your discharge under Other Than Honorable (OTH) conditions; however, Commander, Navy Personnel Command, (CNPC) returned the proceedings for re-notification and processing after you were first referred to a medical officer for an opinion regarding alcohol dependency and subsequent rehabilitation treatment.

You received inpatient rehabilitation treatment from February through March of 1983 for “other mixed or unspecified substance abuse and alcohol dependence.” Subsequently, you returned to your command and continued service without immediate re-notification of your pending administrative separation proceedings. However, you then received three additional NJPs, for violations of Article 128 due to assault, Article 121 due to larceny, and Article 86 for absence from your unit, respectively. Following your seventh NJP, you were again notified of processing for administrative separation for misconduct and again elected a hearing before an administrative separation board.

The letter appointing the members for your hearing identified the basis of “pattern of misconduct,” and your hearing proceeded on 24 September 1984. The members again unanimously found that the evidenced of your misconduct substantiated the proposed basis of separation, but recommended that your characterization of service upon discharge should be General (Under Honorable Conditions) (GEN). Prior to completing the report of the hearing results for final action, you received an eighth NJP for a violation of Article 112a due to wrongful possession of marijuana, a Schedule I controlled substance. Although a substance abuse report was reported to CNPC as required by regulations, action on your recommended administrative separation proceeded without renotification of the additional offense of drug abuse, and your commanding officer forwarded the record to CNPC concurring with the recommendation of the members. CNPC approved the recommendation and directed your discharge. You were so discharged on 5 December 1984 with a final conduct average of 2.77, which fell below the 3.0 conduct average established for an “Honorable” characterization at the time of your discharge.

Your previous application to the Board was considered on 10 September 2009. Therein, you contended that your discharge was the result of unresolved issues and “alleged” infractions from more than 20 years ago. In the years after that application, you sought care through the Department of Veterans Affairs (VA) and, as of 25 March 2018, were diagnosed with post-traumatic stress disorder (PTSD) which your records have attributed, in part, to your purported traumatic experiences during your period of correctional custody in March of 1982. The Board denied your request for 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 to upgrade your discharge from “Under Honorable Conditions (General)” (GEN) to “Honorable” and your contentions that you suffered abused during your military service but were not diagnosed or given proper treatment at the time, you have since received a PTSD diagnosis from the VA, you have observed the positive impact on your life following treatment, and you believe that your discharge was “labeled” incorrectly in light of your diagnosis. For purposes of clemency and equity consideration, the Board noted you provided VA records but no supporting documentation describing post-service accomplishments or advocacy letters.

Because you contend that PTSD affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

During military service, he was diagnosed with a substance use and an alcohol use disorder. 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 another mental health condition. Substance use and problematic alcohol use are incompatible with military readiness and discipline and the evidence indicates that he was his misconduct and deemed responsible for his behavior. Post-service, he has received a diagnosis of PTSD that has been attributed to military service. Unfortunately, available records not sufficiently detailed to establish nexus with his misconduct, particularly given his in-service statements and his pre-service substance use. Additional records (e.g., post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, “it is my considered clinical opinion there is post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence his misconduct could be attributed 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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board noted your drug use and determined that 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. Additionally, the Board concurred with the AO regarding the lack of nexus between your in-service misconduct and your temporally remote PTSD diagnosis more than 30 years after your discharge. In this regard, the Board considered the referenced policy guidance, which specifies that the symptoms and behaviors associated with PTSD do not normally mitigate premeditated misconduct such as larceny and, also, that the severity of violent crimes such as assault may outweigh the mitigating effect of a mental health condition upon consideration of all relevant factors. The Board also noted that your first administrative separation board recommended separation under OTH conditions after only four NJPs, but was returned to afford you the benefit for rehabilitation treatment. Notwithstanding this opportunity, the Board observed that your misconduct not only continued, but in fact, escalated.

Moreover, the Board noted that your eighth NJP for drug use occurred after your second administrative separation board hearing. The Board considered that your command could have withheld final action on the members' favorable recommendation and, instead, pursued an OTH discharge for your subsequent wrongful drug abuse but, to your significant benefit, did not. Therefore, the Board concluded you already received a large measure of clemency in your case. As a result, the Board concluded significant negative aspects of your active service outweighed the positive aspects and continues to warrant a GEN characterization. While the Board 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,

1/31/2023

