



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

█  
Docket No. 7176-22  
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 limitations 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 13 March 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 service 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)/mental health condition (MHC) (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 an advisory opinion (AO) from a qualified mental health professional and your response to the AO.

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

You enlisted in the United States Navy and commenced a period of service on 18 December 1984. On 27 May 1986, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 116, for breach of peace. On 4 November 1986, you received your second NJP for violating UCMJ Article 113, for misbehavior as a lookout by sleeping while on watch. You were formally counseled for this misconduct and afforded an opportunity to make a statement in response but elected not to make a statement. On 16 March 1987, you received your

third NJP for violating UCMJ Article 92, for failure to obey a lawful order. You did not appeal any of these NJPs.

On 17 May 1987, the ██████████ was attacked. On 23 September 1987, you received your fourth NJP for violating UCMJ Article 112(a), for the wrongful use of cocaine. You did not appeal this NJP.

On 14 October 1987, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to pattern of misconduct, commission of a serious offense, and drug abuse. After consulting with qualified counsel, you waived your right to present your case at an administrative separation board. On 14 December 1987, you were discharged from the Navy for pattern of misconduct with an Other Than Honorable (OTH) characterization of service and assigned a RE- 4 reenlistment code.

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire to upgrade your characterization of service, (b) your contention that you were suffering from undiagnosed PTSD during service as a result of the attack on the ██████████, and (c) the impact that your mental health had on your conduct during service. For purposes of clemency and equity consideration, the Board noted that you provided evidence of post-service accomplishments and character letters in support of your request.

In your petition, you contend that you were suffering from undiagnosed PTSD after having witnessed the ██████████ get damaged by an Iraqi missile attack on May 17, 1987, and losing your friend in that same attack. You explain that you used cocaine as a way to escape from the PTSD symptoms. You provided medical documents in support of your petition, to include diagnoses of PTSD and Major Depressive Disorder, and a letter from a psychiatric nurse at Cooperative Health dated 12 July 2022. 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 17 January 2023. The Ph.D. noted in pertinent part:

The Petitioner contends that he suffered from undiagnosed PTSD from having witnessed the ██████████ get damaged by an Iraqi missile attack on May 17, 1987. His records indicate deployment to the Persian Gulf on February 24, 1987: "The ship (██████████) is about to enter a Malaria endemic region, specifically the region consisting of the Suez Canal through Djibouti and including Saudi Arabia and the Persian Gulf operating area." The same page of the Petitioner's health record also notes that on April 22, 1987, "Departed area of known malaria endemicity, and terminal prophylaxis of Chloroquine and Primaquine Phosphate begun this date." The Petitioner submitted photos of damaged ships to include one photo of the ██████████ from October, 2000. He submitted a printout of diagnoses dated March 2022, with no source listed and his name hand-written at the top that indicates diagnoses of PTSD and Major Depressive Disorder, Recurrent. Five character references, post-service accomplishments and a letter from a psychiatric nurse at Cooperative Health dated July 12, 2022 were also submitted. Three of the Petitioner's four NJP's occurred

prior to the attack on the ██████████ and the dates of his deployment to the gulf are unclear given inconsistency between his statement and his record. There is no evidence that he 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. He has provided medical evidence of a diagnosis of PTSD that is temporally remote to service.

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

The Board also considered your reply to the AO, dated 16 February 2023, and the additional evidence that you submitted in support of your request.

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about your mental health during service. Specifically, the Board felt that your misconduct, as evidenced by your four NJPs, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved a drug offense. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that drug use is contrary to Navy core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to fellow service members. In making this determination, the Board concurred with the advisory opinion that there was no evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge.

The Board considered your argument that your first three NJPs were minor in nature and should not be reviewed in connection with your final NJP, which you argue was the result of self-medication due to mental health issues. However, the Board disagreed and felt that four NJPs in a single term of enlistment demonstrated a pattern of misconduct. The Board reviewed a medical document, dated 6 October 1987, in which you report that you were given a cigarette by an acquaintance and only later found out that it contained cocaine. The Board felt that this comment was contrary to your current assertion that you used cocaine as a way to manage mental health symptoms. Additionally, the Board noted that your physical examination performed on 20 November 1987 reported that your “present health status is good” and no mental health symptoms or concerns were disclosed. The Board found that your active duty 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 otherwise not be held accountable for your actions. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization.

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. 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 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,

3/21/2023

█