



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

█  
Docket No. 7316-22

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 6 February 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)/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 dated 8 December 2022. Although you were provided an opportunity to comment on the AO, you chose not to do so.

You entered active duty with the Navy on 2 October 1979. On 10 October 1979, you were retained in the Navy after acknowledging you committed fraudulent enlistment by concealing two civil conviction prior to your enlistment. During the period from 28 May 1980 and 12 September 1980, you received three non-judicial punishments (NJP) for two specifications of absence from appointed place of duty and two specifications of unauthorized absence (UA) totaling 16 days. During the period from 24 January 1981 and 2 March 1981, you received three NJPs for willfully disobeying a lawful order, dereliction of duty, two specifications of UA totaling four days, violation of a lawful general order, and smoking marijuana.

On 6 March 1981, you received an evaluation from the Counseling and Assistance Center (CAAC), which determined you were not drug dependent, but a daily user of marijuana and alcohol and admitted user of amphetamines, LSD, and barbiturates. After failing to attend you scheduled CAAC appointment, on 30 March 1981, you received NJP for being UA for 10 days, missing ship's movement, breaking restriction, and making a false official statement. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to frequent involvement with military authorities/drug abuse. After waiving your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge with an Other Than Honorable (OTH) characterization of service. On 21 May 1981, you received an additional NJP for willfully disobeying a lawful order, two specifications of smoking marijuana, and dereliction in the performance of duty. The SA approved the CO's recommendation and, on 14 August 1981, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. On 28 February 1983 and 15 March 1984, the NDRB denied your requests after determining that your discharge was proper as issued.

You previously applied to this Board for a discharge upgrade but were denied on 20 February 1986. The Board determined the mitigation evidence you submitted in support of your request was insufficient to offset the seriousness of your misconduct, which resulted in eight NJPs.

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 and contention that you were suffering from a mental health condition and never offered help for your depression. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 8 December 2022. The AO stated in pertinent part:

That Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated. Counseling was recommended, however he did not attend. 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 no medical evidence in support of his claims. 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.

The AO 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."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your eight NJPs, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved multiple drug offenses. 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. Further, the Board considered the likely negative impact your conduct had on the good order and discipline of your command. In addition, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a MHC. Finally, the Board noted that there is no evidence in your record, and you submitted none, to support your contention that you were suffering from a mental health condition at the time. 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. 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 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,

2/15/2023

█

Executive Director

Signed by: █