



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

█  
Docket No. 8483-22  
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 27 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 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. Although you were afforded an opportunity to submit an AO rebuttal, you did not do so.

You enlisted in the United States Navy and commenced active duty on 18 March 1988. On your enlistment application, you disclosed a pre-service arrest for driving under the influence of alcohol (DUI) and pre-service marijuana use. On 1 April 1988, you were formally counseled regarding a failed urinalysis during your initial training. Your command chose not to process you at that time, but put you on notice that such misconduct could result in your separation from service.

On 6 July 1989, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 86, for a one-day period of unauthorized absence (UA) from your unit. On 20 July 1989, you received your second NJP for violating UCMJ Article 112(a),

for the wrongful use of amphetamine/methamphetamine. On 14 December 1989, you received your third NJP for violating UCMJ Article 86, UA for a period less than one day. On 2 January 1990, you received your fourth NJP for violating UCMJ Article 112(a), for the wrongful use of amphetamine/methamphetamine. You did not appeal these NJPs.

On 29 December 1989, you were evaluated by CAAC and determined to be psychologically dependent on drugs and alcohol. On 5 January 1990, you were evaluated by a medical professional and deemed psychologically drug dependent and recommended for level II treatment for substance abuse.

On 2 March 1990, you received your fifth NJP for resisting apprehension, causing a breach of the peace, and drunk and disorderly conduct. You did not appeal this NJP. As a result, you were notified that you were being processed for an administrative discharge by reason of misconduct due to drug abuse and pattern of misconduct. You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. On 21 March 1990, you were discharged from the Navy for misconduct (pattern of misconduct) with an Other Than Honorable (OTH) characterization of service and assigned an 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 struggling with an undiagnosed mental health condition during service, and (c) the impact of those mental health issues on your conduct. For purposes of clemency and equity consideration, the Board noted you provided an advocacy letter but no documentation related to your post-service accomplishments.

In your petition, you contend that you were suffering from an undiagnosed mental health condition, which contributed to your misconduct. You explain that you suffered from the disease of alcoholism and that you “made bad choices” due to the alcohol. 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 4 January 2023. The Ph.D. noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His alcohol use disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. Substance use and problematic alcohol use are incompatible with military readiness and discipline and considered amenable to treatment, depending on the willingness to engage in treatment. When evaluated during military service, the Petitioner demonstrated an awareness of his misconduct and was deemed responsible for his behavior. Unfortunately, available records are insufficient to establish clinical symptoms of another mental health condition, as his problematic alcohol and substance use began prior to military service and continued during military service. Additional records (e.g., mental health records listing the Petitioner’s diagnosis, symptoms, and their specific link with his misconduct) may aid in rendering an alternate opinion.

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 all of his misconduct could be attributed to a mental health condition, although some of his misconduct could be attributed to his in-service diagnosed alcohol use disorder.”

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 regarding mental health. Specifically, the Board felt that your misconduct, as evidenced by your five NJPs, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved multiple drug offenses. 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 illegal drug use is contrary to the Navy core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of fellow shipmates.

In making this determination, the Board concurred with the advisory opinion that there was no convincing 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. Your alcohol use disorder diagnosis, which is not a mental health condition, was based on observed behaviors and performance during your period of service and the psychological evaluation performed by the mental health clinician. Substance abuse is incompatible with military readiness and discipline. Throughout your disciplinary processing, you never raised concerns of a mental health condition or mental health symptoms that would have warranted a referral for further evaluation. You did not appeal your NJPs and you waived your right to present your case at an administrative separation board with the assistance of counsel. As a result, the Board concluded that your misconduct was not due to mental health-related symptoms. 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, \_\_\_\_\_

3/2/2023



Executive Director

Signed by: █