



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

█  
Docket No. 8658-22  
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 limitation 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 15 May 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) (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) furnished by a qualified mental health professional, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

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 began an initial period of active duty on 20 September 1985. On your enlistment application, you disclosed pre-service marijuana use. On

31 December 1985, you received Non-judicial Punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 121, for larceny by stealing a bottle of cologne from the Navy Exchange. You were formally counseled for this misconduct and put on notice that further action could result in administrative or judicial processing. On 31 December 1986, you were awarded your second NJP for violating UCMJ Article 112(a), for wrongful use of a controlled substance (marijuana). You were again counseled due to your misconduct. On 27 February 1988, you were awarded your third NJP for violating UCMJ Article 128, for assault of a shipmate and received another formal counseling. You did not appeal any of these NJPs.

On 11 June 1989, you were honorably discharged from your initial period of service and immediately reenlisted. While attached to the █, you participated in FLEETEX 2-91 and Operation Desert Shield/Storm.

On 5 November 1992, you received your fourth NJP for violating UCMJ Article 81, for conspiracy, and Article 121, for larceny. On 24 June 1993, you received your fifth NJP for violating UCMJ Article 112(a), for wrongful use of a controlled substance, and Article 91, for disrespect. On 25 July 1993, you received your sixth NJP for violating UCMJ Article 112(a), for wrongful use of a controlled substance. You did not appeal any of these NJPs.

Prior to your discharge, you received a physical examination on 27 July 1993 in which you denied mental health symptoms. On 31 August 1993, you were screened by the Drug and Alcohol Program Advisor (DAPA) and provided a follow up medical evaluation a few weeks later, during which you were diagnosed with cannabis use and denied alcohol abuse.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Navy on 3 September 1993 with an Other Than Honorable (OTH) characterization of service, your narrative reason for separation is "Misconduct – Commission of a Serious Military Offense," your separation code is "HKQ," and your reenlistment code is "RE-4."

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: (a) your desire to upgrade your discharge character of service, (b) your contention that you were suffering from undiagnosed mental health issues during service, and (c) the impact that your mental health issues may have had on your behavior. For purposes of clemency and equity consideration, the Board noted that you provided evidence related to post-service accomplishments and character letters.

In your petition for relief, you contend that you were never offered substance abuse treatment by your leadership nor did you seek medical or mental health care related to your "experiences during war time." As part of the Board's review process, a qualified mental health professional

reviewed your contentions and the available records and issued an AO dated 6 April 2023. The AO noted in pertinent part:

The Petitioner contends that he was never offered substance abuse treatment while in service. He submitted 4 character references and inpatient treatment notes from █ where he was admitted from December 30, 2008 to January 5, 2009 for detoxification. He was diagnosed with Opiate Dependence and withdrawal, Alcohol Dependence and withdrawal, Cocaine Dependence, and Cannabis Dependence. Service medical records indicate that he was properly assessed by the Drug and Alcohol Program Advisor (DAPA) in August 1993 and provided a separate medical evaluation a few weeks later. He was diagnosed with Cannabis use and had denied alcohol abuse. There is no evidence that the Petitioner was diagnosed with any mental health condition other than Cannabis Use, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your six NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your repeated misconduct and its impact on the mission. The Board also considered that your misconduct 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. Further, the Board concurred with the AO that there is no evidence of a mental health condition that may be attributed to military service or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. The Board note that the misconduct you committed in your first enlistment, prior to your participation in Desert Shield/Storm, was almost identical to the misconduct you committed in your second period of enlistment. Your misconduct began almost immediately after your initial enlistment and spanned your entire term of service. Additionally, you did not raise any mental health concerns through the disciplinary process. The Board determined the record clearly reflected 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 demonstrated that you were mentally responsible for your conduct and that you should therefore be held accountable for your actions. 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 carefully considered the evidence you submitted in mitigation, even in light of the Wilkie Memo and reviewing the record liberally and 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, \_\_\_\_\_

5/17/2023

█

Deputy Director

Signed by: █