



**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. 8730-22

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 reconsideration application on 14 April 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider, along with your response to the AO.

You enlisted in the U.S. Navy and entered active duty on 18 June 1984. As part of your enlistment application, on 5 July 1983, you acknowledged and signed the "Drug and Alcohol Abuse Statement of Understanding." Your pre-enlistment physical examination, on 7 July 1983, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 21 June 1984, at Recruit Training Command, ██████████, you acknowledged being briefed on the: (a) Navy policy on drug and alcohol abuse, (b) legal consequences of illicit drug use, (c) effects of drug and alcohol abuse on discipline and combat readiness, (d) consequences of drug trafficking, (e) physical and psychological effects of drug and alcohol abuse, and (f) the Navy's urinalysis screening program. You also acknowledged reading the "Drug and Alcohol Abuse Statement of Understanding," and certified you understood all the information contained therein.

On 31 July 1986, you received non-judicial punishment (NJP) for unauthorized absence (UA). You did not appeal your NJP. On the same day, your command issued you a "Page 13" retention warning (Page 13) documenting your disciplinary infractions and pattern of misconduct. The Page 13 expressly advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

On 9 October 1986, you received NJP for failing to obey a lawful order. You did not appeal your NJP. On the same day, your command issued you a Page 13 documenting your disciplinary infractions and a pattern of misconduct. The Page 13 again advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

On 2 January 1987, you received NJP for: (a) wrongfully damaging another service member's personal property, (b) assault consummated by a battery, and (c) drunk and disorderly conduct. You did not appeal your NJP.

Your physical examination, on 5 June 1987, noted no psychiatric or neurologic issues or symptoms. On or about 22 December 1987, your brother was tragically killed on base in the ██████████ riding his motorcycle home from his job.

On 20 July 1988, you received NJP for the wrongful use of methamphetamine/amphetamine. You did not appeal your NJP.

On 1 August 1988, you commenced a period of unauthorized absence (UA) that terminated after seven days, on 8 August 1988, with your surrender to military authorities. On 9 August 1988, you commenced a period of UA that terminated after thirty-one days on 9 September 1988. On 9 September 1988, you commenced another UA. On 9 October 1988, your command declared you to be a deserter. Your UA terminated after forty-seven days, on 26 October 1988, with your surrender to military authorities.

Upon your return to military authorities, you underwent a medical examination on 26 October 1988. You disclosed to a Medical Officer during the examination that you were still using methamphetamine with your last usage being approximately one week prior to the examination.

On 18 January 1989, you commenced another UA that terminated after two days, on 20 January 1989, with your surrender to military authorities. On 24 January 1989, you commenced another

UA. On 24 February 1989, your command declared you to be a deserter. Your UA terminated after forty-four days, on 9 March 1989, with your arrest by the ██████████ Police Department. Following your arrest and return to military control, you were placed in pretrial confinement awaiting court-martial. On 10 March 1989, your command revoked your security clearance.

On 13 April 1989, you were convicted at a Special Court-Martial (SPCM) for four separate UA specifications totaling 129 days (7, 31, 47, and 44 days, respectively). You were sentenced to confinement for forty days, forfeitures of pay, a reduction in rank to the lowest enlisted paygrade (E-1), and a discharge from the Navy with a Bad Conduct Discharge (BCD). In the interim, on 18 April 1989, a Medical Officer determined that you were not dependent on either drugs or alcohol. Your separation physical examination, on 18 April 1989, noted no psychiatric or neurologic issues or symptoms, and the Medical Officer found you qualified for release from active duty.

Upon the completion of appellate review in your SPCM case, on 15 October 1991, you were discharged from the Navy with a BCD and assigned an RE-4 reentry code.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade, restoration of your highest paygrade achieved, and a disability retirement, along with your contentions that: (a) following the death of your brother you suffered a mental breakdown and your health deteriorated rapidly and severely, and the Navy should properly have recognized what was happening to you or at least cared enough to investigate and inquire, (b) the Navy should have recognized what was happening to you and given you a medical retirement for disability instead of a BCD, (c) post-service you have continued having ongoing health issues and could surely use the benefit of the VA to help you, (d) please consider the comments of, and diagnoses from, the medical providers at ██████████, (e) your mental health issues are not new or even newly developed conditions; and the traumatic precipitant for your mental health issues occurred on active duty, (f) it is an injustice to continue to penalize you for the rest of your life because of a normal and fairly expected mental and emotional reaction to your brother's death and how callously your command gave you the news, (g) you were a young and impressionable person at the time of our service and discharge who experienced a major tragic event and reacted unadvisedly, but also reasonably and humanly under the circumstances, and (h) while you continue to suffer, you continue to live as a useful and productive member of society. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

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 14 March 2023. The Ph.D. stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His substance 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. Post-service, he has received a diagnosis of a mental health condition (MDD) that has been attributed to military service. It is possible the circumstances that were considered uncomplicated bereavement during military service have been re-conceptualized as MDD with the passage of time and improved understanding. There is less information regarding his post-service PTSD symptoms and diagnosis, particularly concerning the traumatic precipitant. While it is possible he may have continued in increasingly extended periods of UA during a depressive episode, there is insufficient evidence to attribute his other misconduct to a mental health condition, particularly as the majority of his misconduct occurred prior to his brother's death. Additionally, the description regarding his substance use is inconsistent, sometimes that it was one-time use encouraged by a peer who recognized his depression and recommended it as a self-medication strategy, or alternately that it was required "to function." Substance use is incompatible with military readiness and discipline and does not remove responsibility for behavior. When evaluated in service, he denied substance dependence. 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 Ph.D. concluded, "it is my clinical opinion there is post-service evidence from a civilian clinician of a mental health condition (MDD) that may be attributed to military service. There is insufficient evidence to attribute his post-service diagnosis of PTSD to military service. There is insufficient evidence to attribute all of his misconduct to a mental health condition."

Following a review of your AO rebuttal submission, the Ph.D. did not change or otherwise modify their original AO findings and conclusions.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The

Board determined the record reflected that your 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 not be held accountable for your actions.

The Board determined that your request for a full medical disability retirement was without merit. The Board determined there was insufficient evidence that you were unfit for continued naval service as a result of a qualified disability condition. The Board noted that you were not referred to a medical board or the Physical Evaluation Board for processing at any time. Further, the Board considered that your separation physical, that occurred prior to your release from active duty, found no evidence of an unfitting disability condition. Finally, even if there was evidence of an unfitting disability condition, the Board noted that you were ineligible for disability processing or benefits based on your misconduct that resulted in a punitive discharge. Therefore, based on the Board's findings that your discharge was proper, the Board also concluded you remain ineligible for disability benefits due to your BCD.

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. The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this was not a case warranting any clemency as you were properly convicted at a SPCM of serious misconduct. The simple fact remained is that you left the Navy while you were still contractually obligated to serve and you went into a UA status on no less than five separate times without any legal justification or excuse. Additionally, 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. Moreover, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct and disregard for good order and discipline clearly merited your discharge. 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,

4/20/2023

[REDACTED]

Executive Director

[REDACTED]