



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. 0699-23
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 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 24 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 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 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 an initial period of service on 1 November 1979. On your enlistment application, you acknowledged pre-service drug use and arrests for filing false police reports, unsafe vehicle, drag racing, hitchhiking, failure to appear, petty theft, and speeding. You served honorably until your discharge on 27 December 1981. You immediately reenlisted and began a second period of service on 28 December 1981.

On 7 June 1982, you pleaded guilty and at Special Court Martial (SPCM) of violating Uniform Code of Military Justice (UCMJ) Article 92, for violation of a lawful general regulation by wrongfully transferring, selling, and possessing a controlled substance, to wit: about .02 grams of methamphetamine. You were sentenced to a Bad Conduct Discharge (BCD), two months confinement, and reduction in rank to E-1. Pursuant to your pretrial agreement, your BCD was suspended and remitted after your confinement.

On 23 July 1982, your command initiated administrative separation proceedings by reason of misconduct due to drug abuse. You waived your right to consult with qualified counsel and to an administrative separation board. Prior to your separation from service, you were medically evaluated and denied mental health symptoms. On 24 September 1982, you were discharged from the Navy 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, (b) your contention that the JAG, NCIS, and master-at-arms colluded and falsified documents which led to your SPCM conviction, and (c) your struggles during confinement and the lack of support offered by your command. For purposes of clemency and equity consideration, the Board noted that you did not provide documentation related to your post-service accomplishments and character letters.

After thorough review, the Board concluded that the 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 any mitigating factors presented in your case. Specifically, the Board felt that your misconduct, as evidenced by your SPCM conviction, 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 such misconduct is contrary to the Navy's core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of fellow service members.

In making this determination, the Board noted that you provided no medical evidence to support a finding that a mental health condition diagnosis existed either during or post service. Throughout the disciplinary process, you did not raise any concerns related to mental health that could have been reviewed or considered in mitigation, or that would have triggered a mental health evaluation. Further, the Board noted that you have not been rated for any mental health conditions by the Department of Veterans Affairs. Due to a lack of evidence, the Board concluded that your misconduct was not due to mental health-related symptoms, rather, was intentional and demonstrated you were unfit for further service.

The Board considered your contentions about the lack of procedural rights during your judicial processing. However, the Board determined there was insufficient evidence that you were denied any rights associated with your SPCM. The record reflects that you knowingly and intelligently entered into a pretrial agreement, wherein you pleaded guilty to the charged misconduct in exchange for limitations on your potential punishment. Specifically, you stated

that “I have consulted with a qualified lawyer within the meaning of Article 27(d), UCMJ, and that I have received the full benefit of his advice prior to the submission and execution of this agreement; I am satisfied with my defense counsel in all respects and consider him qualified to represent me in this court-martial.” The judge ensured that you understood the charges and found that you knowingly committed the misconduct before finding you guilty. There is nothing in the record to support your contentions that documents were falsified or that you were coerced into pleading guilty. Therefore, the Board found no merit in your argument and noted that you received significant sentencing relief by virtue of your pretrial agreement and avoided receiving a BCD. 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 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, _____

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Executive Director

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