



**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. 2680-23

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 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 8 December 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 professional. Although you were afforded an opportunity to submit an AO rebuttal for consideration, you chose not to do so.

You enlisted in the U.S. Navy and began a period of active duty service on 6 July 1979. Your pre-enlistment physical examination, on 2 August 1978, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. As part of your enlistment application, you specifically denied on your medical history of ever having: (a) nervous trouble of any sort, (b) frequent trouble sleeping, (c) receiving counseling of any type, (d) depression or excessive worry, (e) been evaluated or treated for a mental condition, (f) attempting suicide, or (g) being consulted or treated by clinics, physicians, healers, or other practitioners within the past

5 years for other than minor illnesses. However, you underwent another physical examination on 22 September 1981. On your corresponding self-reported medical history questionnaire you admitted attempting suicide at age sixteen (16) by an overdose of sleeping pills. The Board noted that you omitted any mention of this suicide attempt on your enlistment application despite being specifically asked if you ever attempted suicide.

On 30 March 1983, you were convicted by civilian authorities in █ of driving while intoxicated (DWI). The Court suspended your driver's license for six months, and ordered to perform community service and pay a fine.

On 11 May 1983, you received non-judicial punishment (NJP) for the wrongful use of marijuana. You did not appeal your NJP. Following your positive drug test, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. You expressly waived in writing your rights to consult with counsel, submit a statement, and to request a hearing before an administrative separation board.

In the interim, on 19 May 1983 your commanding officer (CO) recommended your separation with an under Other Than Honorable conditions (OTH) characterization of service. In his recommendation to the Separation Authority, your CO stated:

[Petitioner] had compiled a fine record as aviation ordnance man while serving in VA-81. He is an intelligent young man who could have gone far in the Navy. This past April, however, occasioned a drastic change in his value to the naval service. He was ordered to appear for a command-directed urinalysis at the local CAAC center when his behavior was noticed to be erratic while on the job one day. The portable unit test proved positive, and the same was sent to the laboratory to be verified...At this time [Petitioner] admitted to regular marijuana abuse and said that he intended on further regular abuse. He felt it did not impair his professional performance and indicated that he would rather abuse drugs than remain in the Navy. Shortly afterwards he was interviewed by the squadron legal officer...having been afforded his rights and advised that an admission of drug abuse could result in NJP and an OTH administrative separation...[Petitioner] was awarded NJP at Captain's Mast, (which included having his frocking to E-5 rescinded and a reduction in rate from E-4 to E-3), where he once again acknowledged regular drug abuse and restated that he was not interested in rehabilitation. It is felt that [Petitioner] exhibits no potential for continued useful naval service, and that an administrative separation under other-than-honorable conditions is warranted.

Your separation physical examination, on 6 July 1983, noted no neurologic or psychiatric conditions or symptoms. Ultimately, on 7 July 1983, you were discharged from the Navy for misconduct with an OTH characterization of service 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 Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that: (a) as an offering of justification for your wrongful doing, you can only offer personal issues of love and family because the Navy didn't teach or prepare one for the separation or loss from love, (b) after your 1982 cruise, you went home on leave only to learn of the death of a friend, (c) you may have been 21 years old but the pain of this passing was a hard lesson, and you drank and used marijuana. (d) you developed a growing inferiority complex, not sure of what you wanted or where you were to go, (e) at such time this was the beginning of your alcoholism, depression, and trouble to follow, (f) in hindsight, you know that you should have sought help in the beginning, (g) since then, you have sought help through psychologists and psychiatrists and AA, (h) you always retained the pride you had when serving your country, (i) you know you made a mistake; a big one, (j) you have lived with your guilt of leaving a promising career, and (k) you are asking for forgiveness in the form of being recognized as a true veteran with an upgraded discharge. For purposes of clemency and equity consideration, the Board considered the entirety of 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 16 October 2023. The Ph.D. stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He had several opportunities to tell medical personnel, his command and legal if in fact he felt that the loss of his friend was affecting his judgment and mood, but he did not. 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 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 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. 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 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. 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 further determined that you had a legal, moral, and ethical obligation to remain truthful on your enlistment paperwork. Had you properly and fully disclosed your pre-service mental health history to include your suicide attempt at age sixteen (16), you likely would have been disqualified from enlisting. The Board determined the record reflected that your misconduct and your lack of disclosure about your mental health history 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 did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that illegal drug use is contrary to Navy core values and policy, renders such service members unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. The Board noted that marijuana use in any form is still against current Department of Defense regulations and not permitted for recreational use while serving in the military. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. Even in light of the Kurta, Hagel, and Wilkie Memos 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. 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,

12/13/2023

