



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

██████████  
Docket No. 3544-23  
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 13 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 the 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, 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). In addition, the Board considered an advisory opinion (AO) from a qualified mental health professional. Although you were provided an opportunity to respond to the AO, 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 U.S. Navy Reserve and entered active duty on 26 September 1979. Upon entry onto active duty, you were granted a waiver for drug abuse while in the Delayed Entry

Program (DEP). After a period of Honorable service, you enlisted in the U.S. Navy commencing a second period of active duty on 18 June 1982. During the enlistment processing, you disclosed marijuana use but no waiver was required.

On 17 October 1982, you allege that you were traumatized as a result of motor vehicle accident where you witnessed the death of a friend. On 4 November 1982, you were identified as a drug abuser through two separate urinalysis.

You admit to abusing marijuana on 31 December 1983. However, your record indicates you actually abused marijuana on 31 December 1985. Consequently, on 3 February 1986, you received non-judicial punishment (NJP), for wrongful use of marijuana and cocaine. As a result, the Commanding Officer (CO) made his recommendation to the Separation Authority (SA) that you be discharged with an Other Than Honorable (OTH) characterization. The SA accepted the recommendation and directed you be discharged for drug abuse. You were so discharged on 28 February 1986.

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 after the horrific car accident you were never given any counseling, you began drinking and hanging out with the wrong people, you smoked marijuana on New Year's eve in 1983, the next day you informed the CO and was told you would be getting reduced in rank and fine, you were told later that you were being discharged with an OTH but could file for an upgrade and reenlist in six months. For purposes of clemency and equity consideration, the Board noted you provided supporting documentation describing post-service accomplishments and an advocacy letter.

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 9 November 2023. The Ph.D. stated in pertinent part:

The Petitioner contends that he sustained a motor vehicle accident (MVA) in June 1982 whereby he saw his friend and fellow passenger in the care become decapitated. He submitted post-service accomplishments and VA Rating indicating 50% service-connection for PTSD with TBI granted in August 2019. Service connection notes "TBI symptoms resolved." Review of records do note a MVA in October 1982 where he was subsequently hospitalized for 1 day. There are no further details contained within his service record regarding the accident. Furthermore, there is no evidence that he was diagnosed with a TBI following the MVA. There is no evidence that the Petitioner was diagnosed with a mental health condition or suffered from PTSD while in military service or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. 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. Specifically, the Board determined that your misconduct, as evidenced by your NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included 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 and determined there is insufficient evidence that his misconduct could be attributed to a mental health condition. As explained in the AO, there is no evidence you were diagnosed with a TBI following the MVA and there is no evidence that you were diagnosed with a mental health condition or suffered from PTSD while in military service or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Further, the Board noted you had a history of drug abuse dating back to prior to your initial entry onto active duty that continued through your second enlistment prior to the traumatic event you allege. Finally, 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 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 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. 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,

12/25/2023

