



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. 3709-23
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 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 19 June 2000. Your pre-enlistment physical examination, on 14 October 1999, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. As part of your enlistment application, you disclosed pre-service marijuana usage.

On 20 March 2002, the Addiction Rehabilitation Department (ARD) at █
█ evaluated and diagnosed you as an alcohol abuser. ARD staff
recommended Level I, outpatient rehabilitation treatment for you.

On 30 August 2002, you formally completed the Level I treatment program, and were assigned to an ARD continuing care program (CCP), on 6 September 2002, for the duration of your military service. As part of your CCP assignment, you acknowledged that any further alcohol or drug-related incidents occurring in your career will be viewed as a corresponding rehabilitation failure and may subject you to administrative separation.

On 22 May 2003, you completed an overseas medical screening. On your self-reported medical history, you did not note any neurologic or psychiatric conditions or symptoms. On or about 8 August 2003, you reported for duty on board the █
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On 16 October 2003, a Navy Drug Screening Laboratory message indicated you tested positive for marijuana (THC) at 63 ng/ml, above the testing cutoff level of 15 ng/ml. On 3 November 2003, you received non-judicial punishment for the wrongful use of a controlled substance. You did not appeal your NJP.

On the same day, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. You waived your rights to consult with counsel, submit statements, and to request a hearing before an administrative separation board. On 5 November 2003, you refused to be screened for drug dependency. You understood that by refusing to be screened, you would not be eligible for rehabilitation treatment following your discharge.

On 25 November 2003, your commanding officer (CO) recommended to the Separation Authority that you be discharged with an under Other Than Honorable conditions (OTH) characterization of service. In his endorsement, your CO stated in relevant part:

On 24 September 2003, █ provided a urine sample during a unit sweep that subsequently tested positive for marijuana. When interviewed by a command investigator, █ admitted to smoking marijuana while on active duty. Specifically, █ stated that on 22 September 2003, he purchased a small bag of marijuana from a civilian woman he met out in town and smoked approximately three "bowls" with her. At Captain's Mast, █ reaffirmed this confession and pled guilty to wrongful use of marijuana. Based on the urinalysis results and his own statements, it is clear that █ has violated the Navy's Zero Tolerance Policy and has no potential for further naval service. Consequently, I strongly recommend separating █ for misconduct due to drug abuse and characterizing his service as Other Than Honorable.

Your separation physical examination, on 1 December 2003, and self-reported medical history both did not note any neurologic or psychiatric conditions or symptoms. Ultimately, on 5 December 2003, you were discharged from the Navy for misconduct due to drug abuse with an OTH characterization of service and assigned an RE-4 reentry code.

On 15 January 2008, the Naval Discharge Review Board (NDRB) denied your initial application for discharge upgrade relief.

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 a Secretarial Authority separation. You contend that: (a) on several occasions you were threatened with physical violence and at times was physically assaulted, (b) an E-5 threatened to kill you, threw you off of the ship at sea, and tripped you causing you to fall down a ladder well, (c) at that point you gave up and started using marijuana off duty to cope, (d) you should have gone to your Chief, the ship's psychiatrist or clergy; you regret not seeking a better solution for your personal problems, (e) you were the subject of hazing that led to mental health distress, and such distress led you to abusing alcohol, (f) your hazing and bullying in the work environment served as triggers for your deteriorating mental health, (g) you sought to self-medicate through the use of alcohol and marijuana, (h) despite your Navy setbacks, you have been a law abiding citizen, received advanced degrees, and a minister certification, (i) you give back to your community through your church's outreach programs, (j) your OTH discharge is not reflective of the Sailor you were or the man you have become, (k) the OTH was overly harsh and not consistent with similarly situated Sailors, (l) even if the Board finds no error in the discharge or characterization of service, the Board should grant clemency given your mistreatment in the Navy, your deteriorating mental health, and your post-service societal contributions, (m) your service was not flawless but marked with only minor misconduct that did not affect your work product, (n) no one was injured by your drug abuse, and (o) the majority of your service was Honorable and your post-service conduct and character are worthy of granting clemency in the spirit of the Wilkie Memo. 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 23 October 2023. The Ph.D. stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Post-service, a civilian psychologist has noted the presence of an unspecified mood disorder and personality characteristics that may have been experienced during military service. Unfortunately, available records are not sufficiently detailed to establish a nexus with in-service misconduct. There is no evidence of a formal mental health diagnosis and it is difficult to attribute the Petitioner's misconduct to unrecognized symptoms of a mental health condition, given pre-service marijuana use that

appears to have continued in service. Additional records (e.g., in-service or 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 insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct 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 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 you did not provide any credible or convincing evidence you experienced any notable harassment, hazing, or bullying in the Navy workplace. The Board further 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. Additionally, 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 Department of Defense regulations and not permitted for recreational use while serving in the military. The Board noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. 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. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, 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, _____

12/13/2023

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Executive Director

Signed by: █