



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

█  
Docket No. 4278-23

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 the advisory opinion (AO) furnished by a qualified mental health professional. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the U.S. Navy and commenced active duty on 13 May 1999. Your pre-enlistment physical examination, on 30 January 1998, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

While at your initial recruit training, on 15 June 1999, your command issued you a "Page 13" retention warning (Page 13) documenting your failure to disclose your two dependent children. The Page 13 warned you that any further deficiencies in performance and/or conduct may result

in disciplinary action and in processing for administrative separation. On 25 October 1999, you reported for duty on board the █.

On 24 July 2000, you commenced an unauthorized absence (UA). On 12 August 2000, your command declared you to be a deserter. While in a UA status, you missed your ship's movement on 17 August 2000. Your UA terminated after ninety-three (93) days, on 25 October 2000, when you surrendered to military authorities at █.

On 19 January 2001, pursuant to your guilty pleas, you were convicted at a Special Court-Martial (SPCM) of your 93-day UA, missing ship's movement, and the wrongful use of a controlled substance (marijuana). You were sentenced to confinement for eighty-five (85) days and a reduction in rank to Seaman Apprentice (E-2).

Following your SPCM conviction, on 30 January 2001, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to the commission of a serious offense, and misconduct due to drug abuse. Per the terms of your SPCM pretrial agreement, on 31 January 2001, you agreed to waive your right to request an administrative separation board. In the interim, your separation physical examination, on 7 February 2001, noted no neurologic or psychiatric conditions or symptoms.

On 2 March 2001, the Chief of Naval Personnel recommended to the Separation Authority that you be separated with an under Other Than Honorable conditions (OTH) characterization of service. Ultimately, on 19 April 2001, 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 Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that: (a) you are requesting an upgrade due to emotional distress, (b) you received a Red Cross message that your wife was hospitalized due to pregnancy complications, but you weren't home and she should not have been pregnant, (c) your leave was disapproved and you were overwhelmed with emotional stress, (d) all of this sent your life in a downward spiral, (e) you left the first chance you got and went to Alabama, and (f) you didn't receive counseling and subsequently made poor judgment. 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 3 October 2023. The Ph.D. stated in pertinent part:

During military service, the Petitioner was diagnosed with a mental health condition. There is no evidence of a diagnosis of PTSD. He has provided no medical evidence in support of his claims. His personal statement is consistent with his report in service. It is possible that his UA was related to anxiety regarding his personal stressors and his substance use was a suicide attempt. Additional records

(e.g., post-service mental health records) may aid in strengthening the opinion.

The Ph.D. concluded, “it is my clinical opinion there is in-service evidence of a mental health condition that may be attributed to military service. There is insufficient evidence of a diagnosis of PTSD. There is 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, notwithstanding the AO, the Board concluded that there was no convincing evidence of any nexus between any purported 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 forming the basis of your discharge. As a result, the Board concluded that your serious 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 concluded 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 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. 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. Additionally, the simple fact remains is that you left the Navy while you were still contractually obligated to serve and went into a UA status without any legal justification or excuse for approximately 93 days. 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, 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

