



**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. 5061-23

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 22 January 2024. 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 also considered an advisory opinion (AO) from a qualified mental health professional. Although you were afforded an opportunity to submit an AO rebuttal, 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 United States Marine Corps and commenced a period of service on 3 January 1973. You had two periods of Honorable service before reenlisting and beginning your final period of service on 21 January 1981. On 24 October 1984, you were referred for evaluation

regarding mental health difficulties in the context of marital problems, but you refused offered treatment. However, you did completed a two-day substance abuse awareness course. On 23 September 1985, you were formally counseled regarding poor professionalism. On 6 November you were again formally counseled regarding unsatisfactory performance of duty. On 16 December 1985, you were relieved of your duties at Sea School.

On 3 January 1986, you were found guilty at Summary Court Martial (SCM) of violating Uniform Code of Military Justice (UCMJ) Article 86, for a 20-day period of unauthorized absence (UA). On 21 February 1986, you were referred for a mental health evaluation in the context of command concerns regarding your alcohol use. You denied problematic alcohol use and were diagnosed with a Mixed Personality Disorder, with Passive-Aggressive and Antisocial features. The medical professional noted your statement that if you were “ordered to attend a Drug and Alcohol Level II program or any form of time consuming counseling, [you would] most likely refuse and request a special court-martial and sign for discharge.” On 10 March 1986, you were screened for an alcohol use disorder, but denied any problematic alcohol use and claimed that your poor job performance was due to stress regarding financial difficulties.

On 7 April 1986, after consulting with counsel certified under UCMJ Article 27b, you requested reduction to Lance Corporal and separation in lieu of trial (SILT) by court-martial for your violation of UCMJ Article 112a, for the wrongful use of marijuana as determined by a positive urinalysis. You did not desire to submit a statement in your behalf for consideration by the separation authority. Your SILT request was approved and, on 15 April 1986, you were discharged from the Marine Corps with an Other Than Honorable (OTH) characterization of service and assigned an RE- 3B reentry code.

You previously submitted an application with the Naval Discharge Review Board and were denied relief on 12 March 1993.

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 of service and restore your rank, (b) your contention that you were suffering from undiagnosed mental health issues during service, and (c) the impact that your mental health had on your conduct. For purposes of clemency and equity consideration, the Board noted that you provided documentation related to your post-service accomplishments.

In your request for relief, you contend that you suffered from an undiagnosed mental health condition over the stress of divorce and separation from your child, which contributed to your misconduct. You assert that you were depressed, and although you sought help at sickbay, you did not get the help you needed and began self-medicating through alcohol and marijuana. 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 28 November 2023. The Ph.D. noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. Although there is behavioral evidence in the record of an alcohol use disorder that may have preceded military service and continued during service, he repeatedly denied problematic alcohol use upon evaluation during service. Unfortunately, he has provided no medical evidence to support his claims of depression and trauma. His in-service misconduct appears to be consistent with his diagnosed personality disorder, rather than evidence of a mental health condition incurred in or exacerbated by military service. Additional records (e.g., 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 diagnosis 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, other than his diagnosed personality disorder."

After thorough review, the Board concluded the potentially 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 your contentions about undiagnosed mental health issues and the possible adverse impact on your service. Specifically, the Board felt that your misconduct, as evidenced by your SCM conviction and SILT request, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved a drug offense and an extended period of UA. 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 illegal substance abuse is contrary to Marine Corps values and policy, renders such Marine unfit for duty, and poses an unnecessary risk to the safety of fellow service members. Additionally, absenting yourself from your unit without authorization places an undue burden on your command and fellow service members.

In making this determination, the Board concurred with the advisory opinion 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. Your in-service misconduct appears to be consistent with your diagnosed personality disorder, rather than evidence of another mental health condition incurred in or exacerbated by military service. By definition, personality disorders are characterological and are pre-existing to military service. Although there is evidence in the record of an alcohol use disorder that may have preceded military service and continued during service, you repeatedly denied problematic alcohol use upon evaluation and declined offered

alcohol treatment options. Further, you did not provide any post-service medical documents in support of your contention about a mental health diagnosis and your personal statement fails to draw sufficient nexus to the underlying misconduct. As a result, the Board concluded that your misconduct was not due to mental health-related symptoms. The Board determined the record clearly reflected that your active duty misconduct 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 otherwise not be held accountable for your actions.

The Board highlighted that you requested a SILT, thereby avoiding a possible court martial conviction and punitive discharge. The Board felt that the separation authority already granted you clemency by accepting your separation in lieu of trial by court martial. You were provided the assistance of qualified counsel throughout the disciplinary process and you never raised any issues concerning your mental health during this process. Further, your SILT request does not mention any mental health concerns, which would have triggered a mental health referral and assessment prior to your discharge. As a result, the Board concluded that 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,

1/26/2024

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Executive Director

Signed by: █