



**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. 5115-23  
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 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 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, 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on November 27, 2023. Although you were afforded an opportunity to submit a 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.

During your enlistment processing, you disclose pre-service infractions of three instances of speeding and two of marijuana use. You enlisted in the Navy and began a period of active service on 6 March 1984. In 1984, you received two separate briefs on the Navy's drug and

alcohol abuse policy. During your period of active duty, you received three nonjudicial punishments (NJPs) for infractions ranging from unauthorized absence (UA) and missing ship's movement to the wrongful use of a controlled substance. On 11 February 1987, a counseling and assistance center evaluation found you were not drug dependent but you were alcohol dependent. Therefore, you were to be scheduled for residential treatment. Further, you received two psychiatric evaluations in December 1985 and March 1987. At the conclusion of your first evaluation you were diagnosed with Mixed Personality Disorder and Malingering. At the conclusion of your second evaluation, you were again diagnosed with Mixed Personality Disorder but also Alcohol Abuse. Consequently, you were notified of administrative processing by reason of misconduct due to pattern of misconduct (POM), at which time you waived your right to consult with counsel and to have your case heard before an administrative discharge board (ADB). Your commanding officer recommended you be discharged with an Other Than Honorable (OTH) characterization of service for POM stating in support of his recommendation, "[t]his command has bent over backwards in helping him. He was switched to a different division at his own request. He has received much counseling by his chief petty officers and division officers. Despite all efforts, he has continued his acts of misconduct." On 29 August 1987, the separation authority directed you be discharged with an OTH by reason of POM. On 18 September 1987, you were so discharged.

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 to upgrade your discharge and your contentions that you went UA to deal with family issues and incurred PTSD and other mental health concerns from those personal issues, that were later exacerbated during your work in the boiler room. For purposes of clemency and equity consideration, the Board noted you provided a personal statement and Department of Veterans Affairs medical documents.

Based on your assertions that you incurred PTSD during military service, which might have mitigated the circumstances of your separation, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated on two occasions, including during inpatient hospitalization. His personality disorder and alcohol use disorder diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed by the mental health clinicians. Post-service, the VA has diagnosed Major Depressive Disorder, which has been attributed to military service. Unfortunately, this diagnosis appears to be based on the Petitioner's report of his history. The record does not indicate whether his VA provider had access to his in-service medical record, which is not consistent with the VA assessment, and suggests that the Petitioner is not a reliable reporter. There is no evidence of a diagnosis of PTSD. The Petitioner's in-service misconduct appears to be consistent with his diagnosed personality disorder, rather than evidence of PTSD or another 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 considering his in-service medical records) may aid in rendering an alternate opinion.

The AO conclude, “it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD. There is post-service evidence from the VA of another mental health condition that could be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition, other than his diagnosed personality disorder.”

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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it included a drug offense. 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. Additionally, the Board agreed with the AO that there is insufficient evidence of a diagnosis of PTSD and insufficient evidence to attribute your misconduct to PTSD. As explained in the AO, your in-service misconduct appears to be consistent with your diagnosed personality disorder, rather than evidence of PTSD or another mental health condition incurred in or exacerbated by military service. As a result, the Board concluded your conduct constituted a significant departure of that expected of a service member and continues to warrant an OTH. 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 the 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 is attached 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,

2/2/2024

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Executive Director

Signed by: █