

DEPARTMENT OF THE NAVY

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

Docket No. 9512-23 Ref: Signature Date

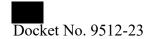
Dear

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 17 November 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 provider from your previous petition. Although you were afforded an opportunity to submit an AO rebuttal for consideration at such time, you chose not to do so.

You enlisted in the U.S. Navy and began a period of active duty service on 28 May 1980. Your pre-enlistment physical examination, on 22 February 1990, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On your pre-enlistment "USN Drug Abuse Certificate (Enlistment Only)," you specifically denied that you have ever used or been in possession of marijuana. However, on your personal statement accompanying your current petition, you expressly stated:



I first starting using marijuana at age ten (10)...my two older brothers pretty much raised me while disciplining me at the same time. They smoked marijuana all the time and every now and then when I wasn't sneaking it from them, they also let me have a puff or two of their Marijuana joints and that's where my addiction started. I so much wanted to be just like my two older brothers know [sic] matter how bad or wrong they were.

On 8 December 1980, you received non-judicial punishment (NJP) for failing to obey a lawful order. You did not appeal your NJP. On 2 November 1981, you received NJP for unauthorized absence (UA) and for insubordinate conduct. You did not appeal your NJP. On 6 November 1981, your command issued you a "Page 13" retention warning (Page 13) where you acknowledged that any further involvement of a discreditable nature with military or civil authorities may lead to processing for an administrative discharge by reason of misconduct. You also expressly understood that an under Other Than Honorable conditions (OTH) discharge could deprive you of virtually all veterans' benefits and also result in substantial prejudice in civilian life.

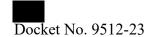
On 12 June 1982, you received NJP for violating a lawful written order and for making a false official statement. You did not appeal your NJP. On 5 August 1982, you received NJP for violating a lawful general regulation when you used marijuana. On 26 August 1982, your command issued you a Page 13 documenting your testing positive for marijuana. The Page 13 advised you that your positive urinalysis may be used as an incident for purposes of administrative separation from the Navy under all conditions should you be convicted of a drug-related offense under the UCMJ or produce another positive urine sample.

However, on 21 January 1983, your command issued you another Page 13 documenting you testing positive again for marijuana. The Page 13 advised you that your positive urinalysis may be used as an incident for purposes of administrative separation from the Navy under all conditions should you be convicted of a drug-related offense under the UCMJ or produce another positive urine sample. On 27 January 1983, you received NJP for violating a lawful general regulation when you used marijuana again.

On 25 February 1983, your command notified you that you were being processed for an administrative discharge by reason of misconduct. In the interim, your separation physical examination, on 21 March 1983, noted no neurologic or psychiatric conditions or symptoms. On 29 March 1983, your command re-notified you that you were being processed for an administrative discharge by reason of misconduct. You consulted with counsel and subsequently waived your right to request an administrative separation board.

On 21 April 1983, you received NJP for two separate specifications of UA. You did not appeal your NJP. Ultimately, on 17 June 1983, you were discharged from the Navy for misconduct with an OTH characterization of service and assigned an RE-4 reentry code.

On 13 December 2021, this Board denied your initial petition for relief.



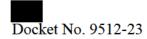
The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that: (a) you realized mistakes were done, and you were young and having personal issues in your life that you were not able to overcome by yourself, (b) now you are a mature and responsible man, (c) you were not happy the way you left the service but you will always be proud of the time you served in the Navy, (d) today you are in therapy on a regular basis to help deal with your childhood trauma, mistakes, and possible psychological addiction, (e) you truly apologize for anything that occurred during your time in service, and (f) today you are a responsible citizen and a first responder, and you help others with their recovery from drugs. 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 22 October 2021. The Ph.D. stated in pertinent part:

Petitioner's service records do not indicate a diagnosis of a mental health condition other than substance abuse. There are no post-service records which indicate a diagnosis of a mental health condition other than the Petitioner's limited statement. Additional information, such as post-service treatment records describing the Petitioner's mental health diagnosis and its specific link to his misconduct, are required to render an alternate opinion. Should the Petitioner choose to submit additional records, they will be reviewed in context of his claims.

The Ph.D. concluded, "it is my considered medical opinion that there is insufficient evidence that the Petitioner incurred PTSD or another unfitting mental health condition during his military service, and there is insufficient evidence that his misconduct should be attributed 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 any 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 cumulative 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 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 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, 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.

