



**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. 4599-23  
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 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 12 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 and your response to the AO.

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 Navy and commenced a period of service on 20 February 1980. On your enlistment application, you acknowledged preservice drug use. On 3 October 1983, you began a period of absence without leave from your unit, and you remained absent until you returned to military control on 11 December 1983. During this period of unauthorized absence

(UA), you were convicted in the State of ██████████ on charges related to drug possession and sentenced to a \$100 fine, 15 days in the county jail (suspended), and probation for six months. On 15 February 1984, you were found guilty at Special Court Martial (SPCM) of violating Uniform Code of Military Justice (UCMJ) Article 86, for the above period of UA, and Article 134, for wrongfully possessing marijuana. During the sentencing argument, you presented issues related to deployment fatigue and the traumatic stressors which you encountered during service. You were sentenced to three months confinement, forfeitures of pay, and reduction in rank to E-3.

On 22 March 1984, you were notified that you were being processed for an administrative discharge by reason of misconduct due to drug abuse and commission of a serious offense. You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. On 30 March 1984, you medically screened and found not to be drug dependent. Prior to your separation, you received a separation physical in which you denied any mental health symptoms or concerns. On 30 July 1984, you were discharged from the Navy for misconduct with an Other Than Honorable (OTH) characterization of service and assigned an RE-4 reentry code.

You previously submitted a petition to the Board for Correction of Naval Records and were denied relief on 6 December 2011.

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, (b) your assertion that you were struggling with undiagnosed mental health conditions during your 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 and character letters.

In your request for relief, you contend that you incurred PTSD from traumatic stressors during sea duty, including witnessing the death of two Sailors during a flight deck accident and navigation difficulty during a sand storm. You assert that you suffered from sea service burnout and that this stress impacted your mental health. In support of your request, you supplied a statement regarding your traumatic exposure aboard the ship. 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 21 November 2023. The Ph.D. noted 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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given preservice behavior that appears to have continued in 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 PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD."

The Board considered your response to the AO dated 4 December 2023, in which you argue, among other things, the Navy's lack of awareness regarding mental health conditions during your time in service. The Ph.D. reviewed your rebuttal statement and, as no new medical evidence was submitted, left the original opinion unchanged.

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 SPCM conviction, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved both a drug offense and a specific 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 the Navy core values and policy, renders such Sailor unfit for duty, and poses an unnecessary risk to the safety of fellow shipmates. Additionally, unexpectedly absenting yourself from your command placed an undue burden on your chain of command and fellow Sailors, and likely negatively impacted mission accomplishment.

In making this determination, the Board concurred with the advisory opinion that there was insufficient 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. There was nothing in your official service records that indicated you sought mental health treatment, or that you raised such symptoms or concerns during your court marital or your separation physical. Further, you did not provide any post-service medical evidence of mental health treatment, aside from discussing your recent sobriety. As a result, the Board concluded that your in-service 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 concluded that your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization.

While the Board carefully considered the evidence you submitted in mitigation and commends your post-service accomplishments and efforts related to sobriety, 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,

1/22/2024

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