



**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. 8009-23  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 Board waived the statute of limitation 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 19 April 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 to 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). The Board also considered the advisory opinion (AO) of a qualified mental health provider and your response to the AO.

You enlisted in the Navy and began a period of active duty on 20 December 1993. On 30 August 1995, you sought medical care at sick call, reporting that you were experiencing stress in addition to suicidal and/or homicidal ideations due to marital problems. Your medical note, as documented by the Naval Discharge Review Board (NDRB) during its documentary review of your request for a discharge upgrade in 1999, indicated that you would prefer "to be discharged from Navy to improve marriage ... Chaplain supports hardship discharge." The following year, on 12 July 1996, you again reported to sickbay for suicidal and/or homicidal ideations due to

marital problems after your spouse requested a divorce during a phone call while you were deployed overseas. Notwithstanding the medical note regarding a potential request for hardship discharge, your record contains no documentation of such request.

You continued to serve without incident other than periodic concerns expressed to medical regarding your marital stress, and you were awarded the Good Conduct Medal on 19 December 1996. Then, on 5 April 1997, the command requested that you be evaluated by the duty corpsman, after observing that you were experiencing psychiatric distress, were positive for alcohol use, and had stated you hated the Navy and were going to leave. The corpsman assessed you as potentially experiencing psychosis and referred you for a medical evaluation from an Emergency Room physician, who diagnosed you as alcohol dependent. During this medical care, you also elected to self-report marijuana use.

Subsequent to the medical evaluation in relation to your alcohol use, you were subject to nonjudicial punishment (NJP), on 9 April 1997, for a violation of Article 134 of the Uniform Code of Military Justice (UCMJ) due to disorderly conduct and drunkenness. Then, on 19 April 1997, you were again subject to NJP for a violation of Article 112a of the UCMJ for wrongful use of marijuana. Consequently, you were notified of processing for administrative separation by reason of misconduct due to drug abuse and pattern of misconduct, and you elected to waive your right to a hearing before an administrative separation board or to submit a statement. The recommendation for your separation under Other Than Honorable (OTH) conditions was approved, and you were so discharged, on 12 May 1997, for drug abuse.

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 to "Honorable," to change your narrative reason for separation to "Secretarial Authority," and to change your reentry code to "RE-1." You contend that you served honorably until you began experiencing mental health symptoms due to unpleasant emotions and stress from issues with your former spouse, and you resorted to alcohol and marijuana as a coping method to self-medicate your mental health symptoms. You further argue that your discharge was inequitable and erroneous based on material error due to inadequate opportunity to try to rehabilitate your deficiencies, receiving little to no guidance or mentorship during the downward spiral that began due to your marital issues, and, even though you sought mental health assistance on multiple occasion, your discharge was unduly harsh considering all the circumstances applicable to your situation. Finally, you assert your post discharge character and accomplishments warranting clemency when considered in conjunction with your otherwise Honorable service. For purposes of clemency and equity consideration, the Board noted you submitted your résumé, diplomas, and two character letters.

Because you contend that a mental health condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

There is some evidence from previous record review that the Petitioner visited the medical department on a few occasions with complaints of mental health symptoms. However, there is no that he was diagnosed with a formal mental health

condition in military service, other than alcohol use disorder. Substance use and problematic alcohol use are incompatible with military readiness and discipline and do not remove responsibility for behavior. The Petitioner has provided no post-service medical evidence to support his claims. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, which appears consistent with alcohol use disorder. 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 AO concluded, "it is my clinical opinion there is in-service evidence of mental health symptoms experienced during military service. There is insufficient evidence to attribute his misconduct to a mental health condition, other than alcohol use disorder."

After reviewing your rebuttal evidence, the AO remained unchanged.

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 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. 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. Further, the Board concurred with the AO that, although there is in-service evidence of mental health symptoms experienced during military service, there is insufficient evidence to attribute your misconduct to a mental health condition other than alcohol use disorder. As explained in the AO, there is no evidence that you were diagnosed with a formal mental health condition in military service, other than alcohol use disorder, and you provided no post-service medical evidence to support your claims. Additionally, with respect to the specific contentions you must be provided an opportunity to receive drug abuse rehabilitation services, the Navy was not required afforded you an opportunity to "rehabilitate" the underlying misconduct associated with your drug abuse. Unlike the basis of pattern of misconduct, the basis of separation for misconduct due to drug abuse requires only a single offense to warrant discharge under OTH conditions. Likewise, although you contend that your discharge was unduly harsh in light of the circumstances of your situation, the Board found your OTH characterization was supported by your record of misconduct. Finally, regarding the purported lack of guidance or mentorship and support during your marital issues, the Board found contrary evidence to this contention. In fact, you clearly consulted not only medical but also sought the assistance of the Chaplain. Your records document that he favorably endorsed a potential hardship discharge due to the nature of your marital difficulties. However, the Board found no evidence in your record that you pursued such discharge, nor did you submit any evidence of the action you took with respect to the Chaplain's advice. Regardless, the Board found that you had access to support resources as well as an awareness and willingness to seek such assistance; therefore, the Board found this contention without merit.

As a result, the Board concluded 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 and commends you for your post-discharge accomplishments, 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,

5/8/2024

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