



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

█  
Docket No. 8845-23

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 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 3 June 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, 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 the advisory opinion (AO) furnished by a qualified mental health professional, dated 16 April 2024, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 21 November 1988. On 6 December 1988, you tested positive to wrongful use of a controlled substance-marijuana. On 9 January 1989, you were counseled concerning undisclosed preservice marijuana abuse. You were advised that subsequent UCMJ violations or misconduct resulting in civilian conviction could result in administrative separation.

Between 27 July 1989 to 5 April 1990, you received nonjudicial punishment (NJP) on three occasions for a period of unauthorized absence (UA), drinking underage, and UA from appointed place of duty. Subsequently, you were counseled concerning deficiencies in performance as evidence by your NJPs and advised that subsequent UCMJ violations or misconduct resulting in civilian conviction could result in administrative separation.

On 7 May 1990, you were convicted by civil authorities and charged with soliciting for immoral purposes and visiting a bawdy place. You were found guilty and sentence to pay fines and a period of confinement. On 22 March 1991, you received a fourth NJP for insubordinate conduct and dereliction of duty. Consequently, you were notified of administrative processing by reason of misconduct due to commission of a serious offense and misconduct due to pattern of misconduct. Your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service. The separation authority approved the recommendation and ordered an OTH discharge characterization by reason of misconduct due to pattern of misconduct. On 2 May 1991, 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 for a discharge upgrade and contentions that: (a) you were suffering from an undiagnosed anxiety condition during your period of service, (b) there was a stigma to seek mental health treatment and you felt that there would have been reprisal or unfavorable consequences for getting help, (c) you turned into alcohol as a way to self-medicate your current state, (d) your alcohol usage led you to minor misbehavior actions, and (e) seeking treatment and taking care of shipmates was not the highest priority at that time. For purposes of clemency and equity consideration, the Board noted you submitted a character letter of support and a medical document.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

The Petitioner submitted a letter dated January 2022 from a psychiatrist indicating that the Petitioner had "prior diagnoses of anxiety and OCD," and had been treated since 2015. There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He submitted evidence of post-service diagnoses of anxiety and OCD; however, the etiology or rationale for diagnoses is not included with the evidence submitted. His personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., post service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

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 found that your conduct showed a complete disregard for military authority and regulations. Additionally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. As explained in the AO, there is no evidence that you were diagnosed with a mental health condition while in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Finally, the Board noted you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct.

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, 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 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,

6/24/2024

