



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

█  
Docket No. 9487-23

Ref: Signature Date

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Dear █

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 13 May 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 29 April 2024, and your response to the AO.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 Navy and began a period of active duty on 18 February 1983. On 29 September 1983, you received nonjudicial punishment (NJP) for wrongful use of a controlled substance-marijuana. On 30 September 1983, you began a period of unauthorized absence (UA)

which lasted 1 hour and 10 minutes. On 13 October 1983, you received a second NJP for a period of UA from appointed place of duty and three instances of failure to obey a lawful order. On the same day, you were counseled concerning UA and failure to obey restriction orders. You were advised that failure to take corrective action could result in administrative separation.

On 14 November 1983, you began a second period of UA which lasted three-days. On 18 January 1984, you were convicted by special court martial (SPCM) for two instances of failure to obey a lawful order from your commanding officer, and wrongful use of a controlled substance-marijuana. You were sentenced to confinement at hard labor and forfeiture of pay.

On 24 February 1984, you were identified as a drug abuser through the accession point urinalysis and recommended for administrative separation. On 24 February 1984, your SPCM findings and sentence were determined to be sufficient in law and fact. Subsequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to frequent involvement and misconduct due to drug abuse, and exercised your right to a case hearing by an Administrative discharge Board (ADB). On 17 May 1984, the ADB voted (3) to (0) that you committed misconduct due to frequent involvement and drug abuse. Your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service. The separation authority approved the recommendation and, on 20 June 1984, you were discharged for frequent involvement.

On 19 November 2014, this Board denied you initial request based on the statute of limitations. On 19 November 2018, this Board denied your request for reconsideration after waiving the statute of limitations and determining your request lacked merit.

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 did not know how to handle certain situations, which led you to turn into using marijuana, (b) you told your recruiter that your coping habit was to smoke marijuana to deal with the stress created by the loss of your father, (c) you were convicted by court martial for numerous write ups that you believe were petty and racist, (d) you had no legal representation during your court martial proceedings, (e) you did not have any help to fight back against the bias, (f) you were lynched instead of been convicted by court martial without a lawyer. For purposes of clemency and equity consideration, the Board noted you did submit character letters of support, a Department of Veterans Affairs decision document, a psychiatric evaluation, a sleep apnea study, and a psychosocial evaluation.

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

There is no evidence that the Petitioner was evaluated and diagnosed with a substance use disorder. There is no evidence that he was diagnosed with another mental health condition in military service. Temporally remote to his military service, he has received a diagnosis of PTSD that a civilian psychiatrist has attributed to military service in part. Unfortunately, there are inconsistencies regarding the Petitioner's statements throughout the record that raise doubts

regarding the reliability of his report. Additionally, there is insufficient evidence to attribute his misconduct to PTSD or another mental health concern other than substance use disorder, given his substance use prior to military service that appears to have continued in military 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 AO concluded, "it is my clinical opinion there is post-service evidence from a civilian psychiatrist of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition, other than substance use 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 and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included drug related offenses. 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 noted you provided no evidence, other than your personal statement, to substantiate your contentions. Therefore, the Board was not persuaded by your arguments of unfair treatment, racial discrimination, bias, or lack of representation at your SPCM. Additionally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD or a mental health condition. As explained in the AO, there is insufficient evidence to attribute your misconduct to PTSD or another mental health concern other than substance use disorder, given your substance use prior to military service that appears to have continued in military service. Further, the Board shared the same concerns regarding your credibility based on inconsistencies in your statements. Finally, the Board noted you only served on active duty slightly over eight months during which you were subject to two NJPs and a SPCM. Thus, the Board found that your conduct showed a complete disregard for military authority and regulations.

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,

5/29/2024

