



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

██████████  
Docket No. 1277-24  
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 6 September 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. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Navy and began a period of active duty on 28 August 1978. Prior to completing a full year of service, you absented yourself without authority on 3 April 1979 and remained in an unauthorized absence (UA) until your surrender on 3 June 1979. You incurred an

additional UA period from the 13th to the 14th of July 1979. On 23 July 1979, you were tried and convicted before Special Court-Martial (SPCM) for a violation of the Uniform Code of Military Justice (UCMJ) under a single charge and specification of Article 86 due to your prolonged period of UA. Your sentence included 15 days confinement at hard labor, 30 days of restriction, and a forfeiture of \$250 pay.

Following your release from the confinement and restriction of your SPCM, you received the first of five nonjudicial punishment (NJP) on 31 August 1979. Your first NJP was for UCMJ violations under Article 92, for possession of marijuana, and again under Article 86 due to failure to go to your appointed place of duty. The disposition of your drug offense directed that you be retained with a written warning and that you be required to complete a drug education program. Your pattern of misconduct continued shortly thereafter with a second NJP, on 16 November 1979, for an additional UA period in violation of Article 86 as well as offenses under Article 91 for disrespect toward a superior petty officer and under Article 92 for failure to obey the lawful order of a superior petty officer. Slightly longer than two months later, you again absented yourself for several days from 2 to 4 February 1980, which resulted in a third NJP, on 21 February 1980, for another Article 86 violation in addition to a violation under Article 87 for missing movement through neglect.

On 1 March 1980, you were issued an administrative counseling, warning you that continued misconduct could result in your discharge under unfavorable circumstances. Then, on 30 March 1980, you were notified of recommendation for your administrative separation due to frequent involvement of a discreditable nature with military authorities and due to drug abuse. The statement of awareness which you signed confirmed your understanding of the potential for a discharge under Other Than Honorable (OTH) conditions; however, you elected to waive your right to a hearing before an administrative board and submitted a statement, wherein you stated, "I do not object to being discharged early and feel that I rate a general (under honorable conditions) discharge, however, I realize that I may receive an under other than honorable discharge."

The day after your separation processing notification, you were subject to a fourth NJP for yet another Article 86 violation due to failure to go at the time prescribed to your appointed place of duty; you were also found guilty of two specifications under Article 134 for wrongfully having an identification card belonging to another crew member and for wrongfully appropriating a seaman identification card. Then, on 17 April 1980, you received your fifth and final NJP for an Article 86 offense for a UA from your appointed place of duty and Article 134 offense for breaking restriction. The recommendation for your separation was forwarded stating that you were recommended to "be discharged from the Navy with a General (Under Other Than Honorable Conditions) discharge." Although no such characterization exists, this error was carried over, on 6 June 1980, into a NAVPERS 1626/2 in your record which included a remark that you would be separated for the basis of "Freq Invovl/Drug" and with a characterization of "General Disch Under OTH." However, on 11 June 1980, in approving your separation for the primary basis of separation code "HKA" consistent with the narrative reason identified in your discharge record, Chief of Naval Personnel (CHNAVPERS) corrected the error in the initial recommendation for your separation by specifying to "discharge member with under other than honorable" for your characterization of service. You were discharged accordingly on 30 June 1980.

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 “correct” your discharge to reflect that you were discharged with a characterization of “General (under honorable conditions)” and your contentions that your OTH characterization is incorrect and you have “proof” of such discharge.

Because you additionally contend that the circumstance of the misconduct were attributable to post-traumatic stress disorder (PTSD) or another mental health condition, the Board also considered the AO. The AO stated 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. 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 insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another 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 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. Further, the Board 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 to attribute your misconduct to PTSD or another mental health condition. As explained in the AO, you provided no supporting medical records and there is no evidence you were diagnosed with a mental health condition.

With respect to your contentions of error regarding the characterization of your discharge from active duty, the Board reviewed the accompanying correspondence which you provided in support of your application. However, as previously discussed, the Board found evidence your record, in part, erroneously documents your characterization of service as a “general discharge under OTH condition;” a non-existent characterization of service. As a result of this administrative error, a counseling entry was erroneously made into your service record stating that you had been discharged from the Naval Reserve, effective 19 April 1984, with a General discharge. With respect to this error, however, the Board noted that it inures to your benefit to the extent that you therefore appear to have received a less negative characterization of service. Therefore, the Board found that any correction to this error in your record would be prejudicial

in comparison to the language contained in your current discharge. Therefore, the Board concluded that this error is neither unjust nor does it warrant correction. Ultimately, the Board found no error with your DD Form 214 that properly documents your characterization of service under OTH conditions.

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 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,

9/27/2024

