



**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. 2325-24

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 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 7 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 this 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 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). Additionally, the Board also considered an advisory opinion (AO) furnished by a qualified mental health provider for your previous petition. Although you were provided an opportunity to respond to the AO at the time, you chose not to do so.

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 initially enlisted in the U.S. Navy and began a period of active duty service on 11 August 1982. Your pre-enlistment physical examination, on 5 March 1982, and self-reported medical history both noted no psychological or neurological issues, symptoms, or treatment history.

On 17 January 1985, you commenced a period of unauthorized absence (UA) that terminated on 18 January 1985. On 10 November 1987, a Navy Drug Screening Laboratory message indicated you tested positive for cocaine above the established testing cutoff.

On 8 December 1987, you received non-judicial punishment (NJP) for the wrongful use of a controlled substance (cocaine). You appealed your NJP, but the General Court-Martial Convening Authority denied your NJP appeal, citing your guilty plea at NJP and the required NJP standard of proof.

On 14 December 1987, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. On 21 December 1987, you consulted with counsel and elected your right to request a hearing before an administrative separation board (Adsep Board). On 18 December 1987, your dependency evaluation determined there was no evidence of any physical or psychological dependency on drugs or alcohol, and concluded that your cocaine use appeared to be episodic and recreational.

On 21 January 1988, an Adsep Board convened in your case. At the Adsep Board, you were represented by counsel. Following the presentation of evidence and witness testimony, the Adsep Board members determined by unanimous vote that the preponderance of the evidence presented substantiated your misconduct as charged. Subsequent to the misconduct finding, the Adsep Board members unanimously recommended that you be separated with an "under Other Than Honorable conditions" (OTH) characterization of service. On 28 January 1988, your commanding officer recommended to the Separation Authority (SA) that you be discharged with an OTH characterization of service. Ultimately, on 5 February 1988, you were discharged from the Navy for misconduct with an OTH characterization of service and were assigned an RE-4 reentry code.

On 5 January 1989, the Naval Discharge Review Board denied your initial discharge upgrade application. On 10 January 2022, this Board denied your initial discharge upgrade petition.

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) "big pharma" knew and intentionally hid the knowledge and has been sued multiple times in the millions for it, (b) what you experienced and went through was "big pharma's" fault, (c) you were over prescribed an opioid and they knew it, and (d) your entire contention was a physician-induced opioid crisis event. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application, which consisted solely of your personal statement with no supporting medical documentation.

As part of the Board review process for your previous BCNR petition, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 18 November 2021. The Ph.D. stated in pertinent part:

There is no in-service evidence of a mental health diagnosis other than a possible substance use disorder. The Petitioner has provided no post-service medical records indicating a mental health diagnosis. While his service record does show he was prescribed an opioid following his discharge from surgery, his medical record indicates that his wound healed well and there is no record of continued need for treatment of his foot or continued prescription of opioid medications. Given the Petitioner's conflicting statements, corroborating documentation is required. Additional information (e.g., post-service medical records describing the Petitioner's mental health diagnosis, symptoms, and specific link to his misconduct) is required to attribute his misconduct to an unfitting mental health condition. Should the Petitioner choose to submit additional records, they will be reviewed in the context of his claims.

The Ph.D. concluded, "it is my medical opinion that there is insufficient evidence that the Petitioner incurred an unfitting mental health condition during military service, and there is insufficient evidence that his misconduct could be mitigated by an unfitting mental health condition."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions or any purported substance abuse disorders and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions or purported substance abuse disorders mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions, symptoms, or any substance use disorders. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. Additionally, the Board noted you were discharged for using cocaine, a stimulant, and not for opiate use. The Board determined the record reflected that your drug-related misconduct was intentional and willful and demonstrated you were unfit for further service. The Board further determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. Additionally, the Board determined that illegal drug use is contrary to Navy core values and policy, renders such service members unfit for duty, and poses an unnecessary risk to the safety

of their fellow Sailors. The Board noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. 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. 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,

6/16/2024

