



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

Docket No. 6473-24

Ref: Signature Date

[REDACTED]

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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 17 January 2025, has carefully examined your current request. 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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 qualified mental health provider and your AO rebuttal submission.

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 enlisted in the U.S. Navy and began a period of active duty service on 4 September 1981. Your pre-enlistment physical examination, on 12 August 1981, and self-reported medical history both noted no psychiatric or neurologic issues, history, or symptoms.

On 26 April 1983, you underwent a Counseling and Assistance Center (CAAC) evaluation following a positive urinalysis test for cannabinoids (marijuana). CAAC personnel determined that you were neither physically nor psychologically dependent upon drugs and your drug involvement was considered to be an isolated incident. CAAC personnel recommended you to attend the Navy Drug Safety Action Program (NDSAP) daytime drug education class from 2 May – 6 May 1983.

On 4 May 1983, your command issued you a “Page 13” retention warning (Page 13) documenting your positive urinalysis test and use of a controlled substance. The Page 13 advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation. You did not submit a Page 13 rebuttal statement. On 6 May 1983, you successfully completed the NDSAP drug education class.

On 2 July 1983, you commenced a period of unauthorized absence (UA) that terminated on 5 July 1983. On 13 July 1983, you received NJP for your 3-day UA. You did not appeal your NJP. On 13 July 1983, your command issued you a Page 13 warning documenting your NJP. The Page 13 advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

On 22 September 1983, you provided a voluntary written statement following another positive urinalysis test for marijuana. You stated, in part:

Due to the interest of the Navy and myself, at this time it will be in the best that I accept this discharge. Out of two years of my enlistment, I've been able to be with my family a total of 45 days. In being married for only two years and having two children this has not allowed me to establish a very strong family, along with financial, job and medical related problems. In not handling these problems in a mature and positive manner has caused me to deviate from my normal pattern of productivity which has led to this admin separation process. I feel after getting my family established and spending time with them and allowing myself to better get established will allow me to gain my responsibility as a productive, motivated and mature adult.

On 28 September 1983, your command vacated the suspended portion of your 2 July 1983 NJP and enforced it due to your continuing misconduct. On 28 September 1983, you received NJP for: (a) UA, (b) the wrongful use of a controlled substance (marijuana), and (c) misbehavior of a sentinel or lookout. You did not appeal your NJP.

On 3 October 1983, your command notified you of administrative separation proceedings by reason of misconduct due to drug abuse. You waived your rights to consult with counsel, submit written statements, and to request a hearing before an administrative separation board.

On 4 October 1983, your commanding officer (CO) recommended to the Separation Authority (SA) that you be separated with an under Other Than Honorable conditions (OTH) discharge characterization. Your CO's recommendation stated, in part:

[Petitioner] has been assigned to his command since 12 August 1982. In April 1983, he participated in a command directed urinalysis which was lab confirmed to be positive. At that time, he received Level I counselling and was placed on aftercare testing. Since then, [Petitioner] has continued to use marijuana. Aftercare testing has been lab-confirmed to be positive on two subsequent occasions. In addition, [Petitioner] agreed to a consent search urinalysis on 11 August 1983, which was also lab-confirmed to be positive, and which ultimately resulted in nonjudicial punishment on 28 September 1983. [Petitioner] has been counselled on numerous occasions by every level in the chain of command. Retention of this individual is not in the best interest of the U.S. Navy. I recommend that he be separated by reason of Misconduct due to Drug Abuse with an Other Than Honorable Conditions discharge...[Petitioner] does not object to this discharge.

In the interim, on 13 October 1983, you received another NJP for UA. You did not appeal your NJP. On 18 October 1983, the SA approved and directed your OTH discharge for misconduct with an RE-4 reentry code. Your separation physical examination, on 19 October 1983, noted no psychiatric or neurologic issues or symptoms. Ultimately, on 21 October 1983, you were separated from the Navy for misconduct with an OTH discharge characterization and were assigned an RE-4 reentry code.

On 4 February 1986, the Naval Discharge Review Board denied your application for a discharge upgrade. On 4 January 1996, this Board denied your initial discharge upgrade petition. You did not proffer any mental health contentions with your initial petition other than a purported drug addiction. On 10 November 1998, this Board again denied your petition for relief.

On 22 February 2023, this Board again denied your petition for discharge upgrade relief. You did not proffer any mental health-related contentions, and instead proffered only general clemency and post-service conduct arguments.

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 have a service-connected mental health condition that excuses, mitigates, and outweighs your discharge, (b) the Board should not give weight to the 2023 Board decision and grant relief pursuant to the Wilkie Memo, (c) changing your discharge from OTH to General (Under Honorable Conditions) ("GEN") does not undermine the seriousness of your marijuana use over 40 years ago as the 2023 Board appears to be concerned about, (d) rather, making this record correction reinforces the Under Secretary of Defense's guidance to the Board stated in the Wilkie Memo, (e) post-service, you have atoned for your mistake, (f) you have taken responsibility for your personal rehabilitation, as you have celebrated decades of sobriety, and you have supported hundreds of men and women - many experiencing homelessness - in

their journeys to freedom from the disease of addiction, (g) even if this Board does not find relief pursuant to the Wilkie Memo, however, this Board has an independent basis for relief pursuant to the Kurta Memo, (h) since your 2023 Board decision, a clinical psychologist diagnosed you with major depression caused by your naval service, and (i) your service-connected mental health condition excuses, mitigates and outweighs your discharge for marijuana use. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

A different licensed clinical psychologist (Ph.D.) than the one who prepared the AO for your third petition reviewed your contentions and the available records, and issued an AO dated 5 November 2024. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner submitted a psychological opinion dated March 2024 in which the author indicates there is a nexus between undiagnosed in-service depression and his misconduct.

There is no evidence that the Petitioner was diagnosed with a mental health condition during his military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. He has provided mental health documentation that indicates a diagnosis of Depression that is temporally remote to service. It is possible that the Petitioner was experiencing depressed mood due to his injuries following motor vehicle accident, however there is no evidence that he was suffering from long-standing clinically diagnosable depression. As such, it cannot be said that his misconduct was due to depression or another medical condition.

The Ph.D. concluded, "it is my clinical opinion that there is sufficient evidence of a post-service mental health condition (Depression). There is insufficient evidence to attribute his misconduct to a mental health condition."

Following a review of your AO rebuttal submission, the Ph.D. did not change or otherwise modify their original AO.

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 and/or related symptoms and your misconduct and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge¹. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Even if the Board assumed that your misconduct was somehow attributable to any mental health

¹ The Board noted that any AO findings, conclusions, and/or opinions are not binding on the Board, and/or do not require the Board to vote in accordance with the AO whether it is favorable, mixed, or unfavorable.

