



**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. 7816-24  
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 18 October 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 qualified mental health provider for your previous petition and your response to the AO.

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 1 July 1986. Your pre-enlistment physical examination, on 2 August 1985, and self-reported medical history both noted no psychiatric or neurologic issues, history, or symptoms.

On 13 October 1989, you received non-judicial punishment (NJP) for: (a) the destruction of government property, (b) drunken/reckless driving, and (c) drunkenness/incapacitation for duty through prior wrongful indulgence of intoxicating liquor. You did not appeal your NJP.

On 27 November 1989, you signed and acknowledged the “USN Drug Abuse Statement of Understanding.” On 29 November 1989, your command issued you a “Page 13” retention warning (Page 13) documenting your DUI and incapacitation for the performance of duties. The Page 13 advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for an administrative separation under other than honorable conditions (OTH).

However, on 5 May 1990, you received NJP for the wrongful possession of methamphetamines. You did not appeal your NJP.

On 14 May 1990, your command notified you of administrative separation proceedings by reason of misconduct due to drug abuse, and misconduct due to the commission of a serious offense. On 14 May 1990, you expressly waived in writing your rights to consult with counsel, submit statements, and to request a hearing before an administrative separation board.

Your medical evaluation, on 15 May 1990, did not reveal any evidence of psychosis or disabling neurosis. On 16 May 1990, your commanding officer strongly recommended to the Separation Authority (SA) that you receive an OTH characterization of service. On 17 May 1990, your separation physical examination noted no psychiatric or neurologic issues, conditions, or symptoms. Ultimately, on 7 June 1990, you were separated from the Navy for misconduct with an OTH discharge characterization and were assigned an RE-4 reentry code.

On 4 February 1991, the Naval Discharge Review Board denied your discharge upgrade application. On 9 December 2020, this Board denied your petition for relief. On 11 March 2024, the BCNR again denied your petition for discharge upgrade relief. The AO drafted on 18 January 2024 for the Board’s consideration for such case concluded, “There is insufficient evidence to attribute his misconduct to PTSD.”

In its decisional document dated 25 March 2024, the BCNR expressly informed you that when the Board convened on 11 March 2024 to hear your case, it carefully considered both the January 2024 AO, as well as your counsel’s AO rebuttal submission received on or around 22 February 2024, well in advance of the board.

Nevertheless, the Board carefully reconsidered 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) given your denial that you ever possessed methamphetamines and the lack of evidence that you were a user of the drug, you believe there was a more sinister backstory

behind the purported discovery of methamphetamine, (b) you were subjected racism and prejudice on active duty, (c) the racism and prejudice you experienced was the root cause of your PTSD, and you believe it played a role in your separation proceedings, (d) your chain of command did not like you and wanted to get rid of you, (e) the lack of evidence to support the allegation that you ever actually possessed methamphetamine, combined with your denial and command's racist motivations to separate you establishes that you did not commit the misconduct for which you were separated, (f) you did not receive any due process prior to being discharged with an OTH, (g) service members cannot be discharged with an OTH without first being afforded the opportunity to elect to have their case considered by an administrative separation board, (h) regardless of any waiver, you did not receive due process in the form of meaningful review and consideration of your case by the separation authority prior to being separated with an OTH, and (i) your waiver was an unknowing and unintelligent waiver, thus rendering your waiver null and void. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records and issued an AO dated 18 January 2024 for your previous petition. As part of the Board's review for your current petition, the Board considered this same 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. He denied drug use in service and continues to claim that the illegal substance was not his. Post-service, the VA has granted service connection for PTSD that is temporally remote to military service. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, given that he denies the possession NJP and he denied mental health symptoms following the alcohol-related misconduct.

The Ph.D.'s AO concluded, "it is my clinical opinion there is post-service evidence from the VA of a diagnosis of PTSD. There is insufficient evidence to attribute his misconduct to PTSD."

After reviewing your AO rebuttal submission in February, the Ph.D. did not change their AO.

The same Ph.D. reviewed your new evidence enclosed with your current petition that included your declaration, VA disability-related correspondence, advocacy letters, and new legal arguments. Following an extensive review of your new and additional evidence included with your current petition, the same Ph.D. still did not change or otherwise modify their original January 2024 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 purported 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 discharge. 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 conditions, the Board unequivocally concluded that the severity of your cumulative misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful, and demonstrated you were unfit for further service. The Board also 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. Additionally, the Board determined that you did not provide any convincing evidence to substantiate that you were the victim of racism, prejudice, bias, or any nefarious command motives.

The Board disagreed with your proffered evidentiary and due process arguments. First, you were found guilty of methamphetamine possession at NJP. If you disputed such findings, you had every right to appeal your NJP to higher authority. However, the Board noted that you did not appeal your NJP at such time, and the Board was not willing to re-litigate the well-settled facts and findings of your case. The Board determined that your arguments were insufficient to overcome the presumption of regularity in your case. Second, the record is clear that, on 14 May 1990, you were properly notified and advised in writing of all of your rights in connection with your pending administrative separation. You waived in writing all of your substantive rights on 14 May 1990, including, but not limited to, your rights to consult with counsel prior to electing or waiving your afforded rights, which obviously included the right to request an administrative separation board. The plain language, in both the administrative separation notice and statement of awareness (Adsep Docs), makes it clear and unequivocal that you knowingly and voluntarily signed the Adsep Docs with full and complete understanding of the terms and ramifications of the agreement. In fact, on the notice form, you signed your name on 14 May 1990 immediately below the following statement: "I have read the above letter and I understand its contents." The Board determined terms of the Adsep Docs are unambiguous and leave nothing to interpretation. Since the Adsep Docs are form documents, their terms are clear on their face and do not otherwise require the Board to look beyond the documents in order to determine the parties' meaning, intent, state of mind, or capacity to execute the Adsep Docs at such time. Interpreting the situation otherwise, without substantial evidence to support such a finding, would likely lead to a speculative decision incongruent with the facts and evidence that are actually in the record.

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. 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. 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.

Lastly, the Board determined that the correspondence sent directly to you dated 27 June 2024 was erroneously sent by BCNR. The Board noted that your previous case was properly heard on 11 March 2024, and that at such time the Board considered all evidence you submitted in support of your petition, as well as your AO rebuttal submission. The Board concluded that such correspondence should have never been sent, and the Board apologizes for any confusion or misunderstanding as a result of receiving such a letter.

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,

11/7/2024

