



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

██████████
Docket No. 8543-24
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 7 March 2025. 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 December 1989. On 14 August 1991, you received nonjudicial punishment (NJP) for violations of the Uniform Code of Military Justice (UCMJ) that included two specifications under Article 86, for being absent from your appointed place of duty, and a violation of Article 92, due to disobeying a lawful order not to consume alcoholic beverages while assigned by your commanding officer as a liberty risk. In light of your misconduct, you were issued administrative counseling advising you that you

were being retained in the Navy but that further misconduct could result in administrative separation.

On 28 February 1992, you were tried and convicted by General Court-Martial (GCM) for four specifications of violations of the UCMJ under Article 112a that included wrongful possession of marijuana, wrongful use of marijuana on three occasions, and wrongful distribution of marijuana in October 1991 and November 1991. Your sentence included a reduction to the lowest paygrade of E-1 and a 100-day period of confinement. Concurrent with your GCM conviction, you were notified of processing for administrative separation by reason of misconduct due to commission of a serious offense and drug abuse. You elected to voluntarily waive your right to request a hearing before an administrative separation board and your commanding officer recommended your discharge under Other Than Honorable (OTH) conditions. The Assistant Secretary of the Navy (Manpower and Reserve Affairs) approved your administrative separation as recommended and you were so discharged on 3 June 1992.

You previously applied to the Naval Discharge Review Board (NDRB) contending that you had been found not guilty of all the charges at your GCM trial proceedings. Your request was considered in 2007 and denied. The NDRB noted, consistent with the Board's findings in the instant review, that "the court memorandum record shows the Applicant was found guilty of violation of UCMJ Article 112a (Wrongful use, possession, etc. of a controlled substance)."

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie, Kurta, and Hagel Memos. These included, but were not limited to, your desire to upgrade your discharge and your contentions that you would have completed your term of enlistment if you had been given a chance. You assert that the injustice you experienced in your trial proceedings and subsequent discharge has overshadowed your life, and you request a review of your official military personnel file (OMPF) and your trial records. You also contend your misconduct was either mitigated by or attributable to post-traumatic stress disorder (PTSD). For the purpose of clemency and equity consideration, the Board noted that you submitted evidence in the form of a personal statement, medical intake forms and history, medical progress notes, and the Department of Veterans Affairs determination of your character of discharge as a bar to veteran benefits.

Because you contend, in part, that PTSD or another mental health condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

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 submitted post-service records indicating that he presented to the Vet Center but was not diagnosed with any mental health condition, and he did not elect to continue therapy. Additional records (e.g., active duty medical records, post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his separation) would aid in rendering an alternate opinion.

The AO concluded, “it is my clinical opinion that there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a 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 NJP and GCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board observed you were given an opportunity to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your OTH discharge. Your conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of your command. Further, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service and there is insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, no evidence that you were diagnosed with a mental health condition during your military service or that you exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. Therefore, the Board 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.

Finally, since your OMPF does not contain documentation of your trial proceedings beyond the summary of the charges and sentence reflected in the one-page court memorandum, the Board found insufficient evidence to contradict the veracity or propriety of the findings and sentence¹. The Board noted that you provided no evidence, other than your statement, to substantiate your contention that your GCM charges were dismissed.

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 and 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.

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

¹ You may request access to your trial records from the Office of the Staff Judge Advocate (Code 40), which has cognizance over the retention and release of such records should you desire to submit them for further review of specific contentions relevant thereto.

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,

3/31/2025

[REDACTED]