



**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: 6959-21  
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 limitations 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 February 2022. 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) furnished by a qualified mental health provider which was previously provided to you. You were afforded an opportunity to submit a rebuttal to the AO, but did not.

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 Navy began a period of active service on 16 September 1999 after receiving moral waiver for the non-minor misdemeanor of theft; you also admitted to pre-service use of

marijuana in July of 1997. After serving for approximately 2 1/2 years without incident, you were the subject of an Executive Officer's Inquiry (XOI) on 10 July 2002, for violations of Article 86, unauthorized absence, and Article 92, failure to obey an order or regulation. Following XOI, you received administrative counseling for retention with separation warnings regarding further misconduct. Because your misconduct was disposed of by XOI rather than nonjudicial punishment (NJP), your in-service conduct qualified for the award of the Good Conduct Medal, which you received on 2 September 2002. However, a naval drug lab message of 5 November 2002 identified that your urinalysis sample from 30 October 2002 had tested positive for metabolites of methylenedioxymethamphetamine (MDMA), a psychotropic derivative of methamphetamine commonly known as "ecstasy." You received NJP on 22 November 2002 for a violation of Article 112a, wrongful use of a controlled substance. Upon notification of processing for administrative separation (AdSep) for misconduct, on 28 November 2002, you exercised your right to representation by counsel before an AdSep board hearing. On 27 February 2003, the AdSep board determined that you were guilty of wrongful drug use, substantiating the basis of misconduct due to drug abuse; the AdSep board recommended separation with an other than honorable (OTH) characterization of service. Upon approval of those findings and recommendations on 17 July 2003, you were discharged with an OTH.

The Board carefully weighed all potentially mitigating factors, such as your desire to upgrade your characterization of service and your contention that the sole incident of drug-related misconduct which led to your AdSep resulted from an undiagnosed and untreated mental health (MH) condition in addition to untreated alcoholism, for which you have been since received medical diagnosis and treatment. The Board also considered matters you submitted in clemency outlining efforts you have made in completing your college degree and working for years to become a licensed correctional officer for the Indiana Department of Corrections. Because you contend a mental health condition either incurred in or aggravated by active military service, the Board also considered the AO, which reviewed your service records and the supporting documents submitted with your request. The AO observed that your in-service records contain no diagnosis of any MH condition or evidence of symptoms or behavioral changes indicative of such a condition. Your post-service MH records indicate diagnoses of anxiety and depression based on symptoms reported post-service. The AO assessed that the preponderance of available evidence was insufficient to establish development and onset of the condition which forms your post-service diagnoses or to identify whether that condition has a nexus to your in-service misconduct which might mitigate your discharge. The Board concurred with the AO and determined that the preponderance of available, objective evidence failed to establish that you suffered from a potentially mitigating MH condition at the time of your military service.

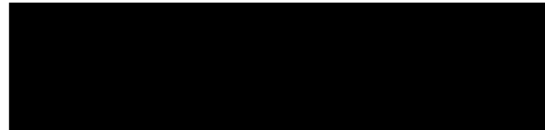
The Board also considered your evidence of post-service clemency. Although the Board notes that you are in the process of bettering yourself and becoming a productive member of society, the Board concluded the potentially mitigating factors you submitted were insufficient to warrant relief at this time. Specifically, the Board determined that your misconduct evidenced by your NJP for wrongful drug use outweighed the mitigating factors you presented. 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,

3/8/2022



Executive Director

