



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

██████████  
Docket No. 1616-24  
Ref: Signature Date

████████████████████  
██  
██  
██  
██

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 16 August 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 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.

You enlisted in the Navy with an admitted pre-service history of marijuana use and began a period of active duty on 30 September 1998. On 30 June 1999, you absented yourself without authority and remained in an unauthorized absence (UA) status until your voluntary surrender to military authority on 21 July 1999. Due to this UA period, you were subject to nonjudicial punishment on 6 August 1999 for a single violation of Article 86 of the Uniform Code of Military Justice (UCMJ). You were awarded 21 days of restriction and extra duty, of which 14 days was suspended. You were also issued administrative counseling advising you that you were

being retained in the Navy but that further misconduct could result in your administrative separation under adverse circumstances.

On 26 March 2002, a message from the Naval Drug Laboratory reported your drug screening urinalysis positive for use of marijuana. You were subjected to a second NJP, this time for a violation of Article 112a of the UCMJ due to your wrongful use of marijuana, and were awarded a reduction to the paygrade of E-3 and a forfeiture of \$784 pay per month for two months. Consequently, you were notified of processing for administrative separation by reason of misconduct due to drug abuse and pattern of misconduct. You elected to waive relevant rights incident to this notification, and the recommendation for your discharge under Other Than Honorable (OTH) conditions was forwarded documenting that you had been evaluated for substance abuse, had been diagnosed as drug dependent, and had declined rehabilitation treatment. Your separation was approved for the primary basis of drug abuse and you were discharged under OTH conditions on 28 April 2002.

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 to upgrade your discharge and your contentions that you were three months from honorably completing your obligated service when you tested positive for marijuana, you believe you were an above average sailor with otherwise honest and faithful service, you made a bad decision due to mental stress and depression which developed in the aftermath the 9/11 terror attacks, and your ship was placed on high alert to protect the U.S. eastern shores. For purposes of clemency and equity consideration, you submitted three character letters, including one from the American Youth Soccer Organization attesting to your volunteer coaching, and a public service "Community Leadership Award" for your efforts with the Department of Public Works.

Because you contend, in part, that a mental health condition affected the circumstances of the misconduct which resulted in your discharge, the Board also considered the 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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Temporally remote to his military service, he has received an evaluation for depression that appears unrelated to his service. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given pre-service marijuana use and UA prior to 9/11. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis 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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. The Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Further, the Board concurred with the clinical opinion that you provided insufficient evidence of a diagnosis of a mental health condition that may be attributed to military service and insufficient evidence to attribute your misconduct to a mental health condition, given the temporally remote nature of your diagnosis of depression, your pre-service use of marijuana, and the fact your UA misconduct preceded your service during 9/11. 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.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, 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 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,

9/4/2024

█