



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

█  
Docket No. 2175-24  
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 23 September 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)/mental health condition (MHC) (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 professional and your response to the AO.

During your enlistment, you were granted an enlistment waiver for pre-service marijuana use. You enlisted in the U.S. Navy and began a period of active duty on 23 May 2001. On 16 August 2006, you received nonjudicial punishment (NJP) for the wrongful use of THC. Consequently, you were notified of administrative separation processing for drug abuse and commission of a serious offense. You elected your rights to consult with counsel and to present your case to an administrative discharge board (ADB). On 3 November 2006, an ADB was convened and found that you committed misconduct and recommended your administrative discharge from the Navy with a General (Under Honorable Conditions) (GEN) characterization. The commanding officer forwarded your administrative package to the separation authority (SA) concurring with the

ADB's recommendation. Ultimately, the SA directed your GEN discharge from the Navy by reason of misconduct due to drug abuse and, on 1 December 2006, you were so discharged. Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request, on 25 September 2008, after determining your discharge was proper as issued.

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: (1) you incurred mental health concerns during military service, (2) while you fully accept responsibility for the actions that led to your administrative discharge, it was an isolated, one-time incident, (3) at the time, you were going through a difficult divorce after discovering that your wife of five years had been unfaithful during your most recent six-month deployment, (4) this led to immense emotional distress, causing you to spiral out of control and, ultimately, fail a urinalysis, (5) in the process, you destroyed what had been a promising 5 ½-year naval career and regrettably did not seek help when you needed it most, and (6) an upgraded discharge would help you restore the sense of pride. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 23 July 2024. 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. Temporally remote to his military service, he has received service connection for a mental health condition. Unfortunately, his personal statement is not sufficiently detailed to provide a nexus with his misconduct, given pre-service substance use and inconsistent reports regarding in-service substance use. 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 post-service evidence from the VA of mental health conditions that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition."

In response to the AO, you submitted a statement from your ADB. After reviewing your rebuttal evidence, the AO remained unchanged.

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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved 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. Further, the Board concurred with the AO that, there is insufficient evidence to attribute your misconduct to a mental health condition. As the AO explained, your personal statement is not sufficiently detailed to provide a nexus with your misconduct, given pre-service substance use and inconsistent reports regarding in-service substance use. Furthermore, there is no precedent within this Board's review, for minimizing a one-time incident. As with each case before the Board, the seriousness of a single act must be judged on its own merit, it can neither be excused nor extenuated solely on its isolation. Finally, the Board determined you already received a large measure of clemency when the ADB recommended you receive a GEN characterization for misconduct that normally resulted in an Other Than Honorable characterization.

As a result, the Board concluded significant negative aspects of your service outweigh the positive and continues to merit a GEN characterization. While the Board carefully considered the evidence you submitted in mitigation and appreciates that you are now remorseful of your misconduct, 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 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,

10/22/2024

