



**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. 2435-24  
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 16 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) (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.

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 Naval Reserve and commenced a period of active duty on 11 March 2018. On 21 September 2018, you received an Honorable discharge upon completion of your required active service. Subsequently, on 4 December 2019, you began a second period of active duty.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated on 20 May 2022 with a “General Under Honorable Conditions” (GEN) characterization of service, your narrative reason for separation is “Misconduct Drug Abuse,” your reentry code is “RE-4,” and your separation code is “GKK,” which corresponds to misconduct - drug abuse.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) twice, requesting a change in your reentry code to allow you to reenlist. The NDRB denied both requests, in May 1993 and December of 2023, after determining your discharge was proper as issued and your reentry code should remain RE-4.

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 Memo. These included, but were not limited to, your desire to change your reentry code to RE-1 and your contentions that your reentry code should be an RE-1 per the recommendation of your chain of command and you innocently ingested marijuana but reported it after testing positive on an urinalysis. For the purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application, including your prior NDRB records, two advocacy letters, a copy of the Wilke Memo, and a copy of President Biden’s Statement on Marijuana Reform.

As part of the Board’s review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 29 July 2024. The AO noted in pertinent part:

In a previous request for review, the Petitioner claimed that he incurred depression in service due to isolation and stressors associated with a permanent change of station during the COVID-19 Pandemic. He contended that his one-time marijuana use was accidental, as he thought he was smoking a flavored cigarette. Previous review of medical records indicated a diagnosis of Adjustment Disorder in military service and noted “visit with a care provider in October 2020 where he discussed his emotional instability and the impact it was having on him personally. Although the Provider mentions the Applicant being depressed there is no mention or documentation that he was prescribed any medication or follow-on care.” A post-service diagnosis of Depression from a civilian provider was also noted. The Petitioner submitted evidence of character and post-service accomplishment. There is some evidence from the Navy Discharge Review Board (NDRB) that he was diagnosed with a mental health condition in military service. There is also some post-service evidence of a mental health condition diagnosed by a civilian provider. The Petitioner has provided no additional medical evidence to support his claims. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, given statements that the use was accidental and the lack of

evidence of mental health concerns sufficiently interfering as to require mental health treatment in service. 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 some evidence from the NDRB 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."

In response to the AO, you submitted additional supporting documentation that provided clarification of the circumstances of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your drug abuse, 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. The Board also found that your conduct showed a complete disregard for military authority and regulations. Additionally, the Board concurred with the AO and determined that, although there is some evidence from the NDRB of a mental health condition that may be attributed to military service and some post-service evidence of a mental health condition diagnosed by a civilian provider, you have provided no additional medical evidence to support your claims. Additionally, the fact you claim your misconduct was an incident of innocent ingestion contradicts your claim that a mental health condition affected your conduct. Further, the Board agreed that available records are not sufficiently detailed to provide a nexus with your misconduct and concurred that additional records, such as those outlined above, may aid in rendering an alternate opinion.

As a result, the Board concluded your misconduct supports your assigned RE-4 reentry code. 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 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,

9/26/2024

