



**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. 3090-24  
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 30 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 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 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. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

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.

During your enlistment processing, you disclosed prior arrests for charges of minor in possession of alcoholic beverages and possession of a controlled substance. You enlisted in the Navy and began a period of active duty on 30 November 1979. On 11 March 1992, you received nonjudicial punishment (NJP) for violating a general order or regulation by having in your possession a substance that tested positive to be marijuana. Despite this misconduct, you were issued administrative remarks documenting the infraction, retaining you in the naval service, and

advising that any further misconduct could result in disciplinary action and potential processing for administrative discharge. Subsequently, a disposition recommendation documented your admission to recreational marijuana use, confirmed you were not drug dependent, and recommended that you receive local counseling. On 15 July 1982, you received a second NJP for possessing marijuana. Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to drug abuse. You elected your procedural right to consult with counsel and waived your right to present your case to an administrative discharge board. On 20 August 1982, you were evaluated by a medical officer because of suicide ideation. During the evaluation, you stated you saw no way to cope and may jump over the side of the ship. In turn, you were diagnosed with situational reaction in a personality disorder (Passive-Aggressive & Antisocial).

On 17 December 1982, the separation authority (SA) directed that you be discharged from the Navy with an Other Than Honorable (OTH) discharge due to Drug Abuse. However, on 23 December 1982, you were erroneously discharged with a General (Under Honorable Conditions) (GEN) characterization of service. The narrative reason for separation listed on your Certificate of Release or Discharge from Active Duty (DD Form 214) also erroneously reflects “Misconduct – Frequent Involvement of a Discreditable Nature with Military Authorities” instead of Drug Abuse, as directed by the SA.

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 incurred significant psychological distress which led to PTSD. Particularly, you were assigned as a technician and unexpectedly required to participate in a “3-day shakedown cruise on a submarine,” and you believe an Honorable discharge more accurately reflects your commitment and service to your country, considering the extraordinary circumstances you faced. For purposes of clemency and equity consideration, the Board noted you did not provide any documentation or advocacy letters 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 18 August 2024. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any symptoms of a mental health condition. His statement is not sufficiently detailed to provide a nexus with his misconduct. Additional records (e.g., mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, “it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition.”

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined 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 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 noted your conduct displayed a complete disregard of military authority and regulations and considered the negative impact your conduct likely had on the good order and discipline of your unit. Additionally, 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 that your misconduct could be attributed to a mental health condition. As the AO explained, your statement is not sufficiently detailed to provide a nexus with your misconduct. Therefore, the Board determined that the record clearly reflected that your active-duty misconduct was willful and that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions.

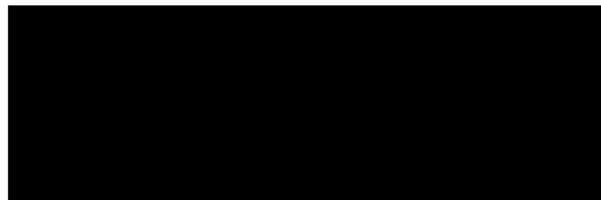
Furthermore, the board determined that you have already benefited from an error in your record. Specifically, you were erroneously assigned a GEN instead of an OTH and this characterization of service allowed you access to veterans benefits you normally would not be entitled to. Based on this error and the additional error with your assigned narrative reason for separation, the Board determined no injustice exists with your record.

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<sup>1</sup> characterization. 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. 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,

10/24/2024



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<sup>1</sup> Even though you were erroneously assigned a GEN characterization of service on your DD Form 214, the Board unequivocally determined your misconduct warranted an OTH vice GEN.