

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

> Docket No. 3098-24 Ref: Signature Date



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 18 October 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, 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. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the Navy and commenced active duty on 6 July 1982 after disclosing one-time pre-service marijuana use. On 20 September 1983, you received non-judicial punishment (NJP) for two specifications of unauthorized absence (UA), disrespectful language toward a superior petty officer, and violating a lawful written order. In January 1984, you tested positive for cannabinoids. On 27 January 1984, you received NJP for wrongful possession of a controlled substance and violating a lawful regulation by possessing a butterfly knife.

Consequently, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to drug abuse (possession). You waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board. On 6 February 1984, you were evaluated for drug dependency, disclosed occasional pre-service and in-service marijuana use, and were determined to be a non-dependent experimental user. The Separation Authority subsequently directed your discharge with an OTH characterization of service, and you were so discharged on 9 March 1984.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 23 January 1995, based on their determination that 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 to change your discharge characterization of service and your contentions that you have struggled with drugs and alcohol since you were a teenager and realize now that you have substance use disorder, you have been clean and sober for "some time," and you were not offered any treatment while in-service. For purposes of clemency and equity consideration, the Board considered your statement, the advocacy letter, and the substance use disorder information sheet you provided.

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 6 August 2024. The AO stated in pertinent part:

Petitioner contends he incurred mental health concerns during military service, which may have contributed to circumstances of his separation.

In February 1984, he was evaluated by a military psychiatrist. During the evaluation, he endorsed "occasional prior service marijuana use and admits using it several times since then to escape from the ship." He denied drug dependence, and the provider noted he was an "occasional user but getting him to stop may be difficult." The Substance Abuse Report noted that marijuana was found during a search based on probable cause. In March 1984, he was discharged under other than honorable conditions.

Petitioner submitted an April 2024 character reference from a mental health provider. He provided general information about substance use disorders.

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. The absence of formal mental health diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed. He has provided no medical evidence to support his claims. Unfortunately, there is insufficient evidence to attribute his misconduct to a mental health condition. The AO concluded, "it is my clinical opinion there is insufficient evidence 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 your 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 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 considered the likely negative impact your repeated misconduct had on the good order and discipline of your command. Finally, the Board concurred with the AO and determined that there is insufficient evidence of a mental health condition that may be attributed to military service and insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, you provided no medical evidence in support of your claims.

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, 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,