



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

██████████  
Docket No. 5228-24  
Ref: Signature Date

██  
██  
██

Dear Petitioner:

This is in reference to your application for correction of your husband's naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of his 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 13 November 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 husband's 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). In addition, the Board considered an advisory opinion (AO) from a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

Your husband enlisted in the U.S. Marine Corps and began a period of active duty on 14 July 1980. On 10 August 1982, your husband received non-judicial punishment (NJP) for unauthorized absences (UA) totaling eight days and 5 hours. On 8 February 1983, your husband was found guilty at special court-martial (SPCM) for larceny of \$200.00 from another Marine. Your husband was sentenced to reduction in rank, confinement and forfeiture of pay. On 19 April 1984, your husband tested positive for marijuana. As a result, your husband was notified for separation for misconduct, pattern of misconduct and elected an administrative discharge board

(ADB). On 2 July 1984, the ADB found that your husband committed misconduct and recommended he be discharged with an Other Than Honorable (OTH) characterization of service. The Commanding Officer forwarded the ADB's recommendation to the Separation Authority (SA). Prior to the SA decision, your husband received his second NJP for 14 days UA. The SA accepted the recommendation and your husband was so discharged on 5 September 1984.

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 contention that your husband was suffering from night sweats, chills, outbursts, and screaming during the night and you were the only one who had to endure his sickness. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

As part of the Board review process, a licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO dated 27 September 2024. The Ph.D. stated in pertinent part:

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

The Ph.D. 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your husband's misconduct, as evidenced by his NJPs and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of his 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, found that his conduct showed a complete disregard for military authority and regulations. Additionally, the Board concurred with the AO and determined there is insufficient evidence of a mental health condition that may be attributed to military service. As explained in the AO, there is no evidence that he was diagnosed with a mental health condition while in military service, or that he exhibited any symptoms of a mental health condition. Therefore, the Board determined that the evidence of record did not demonstrate that your husband was not mentally responsible for his conduct or that he should not be held accountable

for his actions. Finally, the Board observed that you provided no evidence, other than your statement, to substantiate your contentions.

As a result, the Board concluded your husband's conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH. 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.

The Board offers its deepest condolences for your loss.

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,

11/29/2024

