



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

██████████  
Docket No. 6196-24  
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 18 December 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, 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.

You enlisted in the U.S. Navy Reserve and began a period of active duty on 2 February 1993. Upon entry onto active duty, you admitted to illegal use of a controlled substance while in the Delayed Entry Program but a waiver was not required. However, you were granted a waiver for driving under the influence and for menacing.

Between 12 October 1993 and 24 August 1994, you had four period of unauthorized absence (UA) totaling of 108 days. During this period, you missed ship's movement. On 5 September 1994, you received non-judicial punishment (NJP) for accessory after the fact, insubordinate conduct toward a petty officer, and perjury. On 21 October 1994, you were convicted by a special court-martial (SPCM) for two periods of UA, missing ship's movement, and wrongful use of marijuana. You were sentence to confinement and reduction in rank.

Consequently, you were processed for administrative separation due to commission of a serious offense and drug abuse. You elected your right to consult with military counsel and waived your right to an administrative board. Your Commanding Officer (CO) recommended you be discharged with an Other Than Honorable (OTH) characterization of service. The Separation Authority (SA) accepted the recommendation and you were so discharged on 10 April 1995.

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 you witnessed a loadmaster go overboard due to being too close to a jet and he was not recovered. You also contend that, due to this trauma, you became depressed and was unable to process what you had witnessed. You allege this led to your decisions to go UA. 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 11 October 2024. The Ph.D. stated in pertinent part:

The Petitioner submitted a letter from a therapist dated April 2024 noting that the Petitioner was diagnosed with PTSD, conduct disorders, mood disorders. ADHD, schizophrenia and psychosis. He submitted Command History for 1993 of the ██████████  
██████████ Although short periods of UA could be the result of avoidance and depressive symptoms from PTSD, extended, continuous periods of UA, insubordinate conduct, and perjury are not common behaviors associated with PTSD. 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 Ph.D. concluded, "it is my considered clinical opinion there is sufficient evidence of post-service mental health conditions, some of which may be attributed to military service. There is insufficient evidence that all of 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 misconduct, as evidenced by your NJP and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your 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 also 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, the Board concurred with the AO and determined there is insufficient evidence that all of your misconduct could be attributed to a mental health condition. As explained in the AO, short periods of UA could be the result of avoidance and depressive symptoms from PTSD; however, extended periods of UA, insubordinate conduct, and perjury are not common behaviors associated with PTSD. Therefore, the Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

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,

1/9/2025

