



**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. 6699-24  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 10 January 2025. 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 to 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) of a qualified mental health provider and your response to the AO.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Navy and began a period of active duty on 18 May 1998 with a pre-service history of marijuana use. On 9 September 1998, you were subject to nonjudicial punishment (NJP) for multiple violations of the Uniform Code of Military Justice (UCMJ) under Article 86

for a two-day period of unauthorized absence (UA) and Article 92 for two specifications of orders violations. Your record reflects that this was your first alcohol-related incident (ARI) and that you subsequently participated in level II intensive outpatient rehabilitation treatment. Your record documents a four hour and 15 minute period of UA on 12 January 1999 with no apparent or immediate disciplinary action. However, on 13 July 1999, you then received a second NJP for an unspecified period of UA under Article 86, for an Article 92 violation due to failure to obey a lawful written order to use the buddy system, and Article 134 for drunk and disorderly conduct.

On 16 September 1999, following yet another ARI which occurred on the 12th of that month, the Counseling and Assistance Center (CAAC) reviewed your rehabilitation treatment history and noted that, although you were a rehabilitation failure, your previous treatment had not provided a continuum of care with post-treatment counseling. Therefore, it recommended that, if you were retained, you should attend Alcoholics Anonymous (AA) meetings and weekly continuing care.

You were involved in yet another ARI on 7 February 2000 after committing assault and battery associated with alcohol use. A follow-up clinical evaluation in March 2000 noted that you had attended two continuing care meetings before quitting and that you had acknowledged your continued use of alcohol. As a result of continued non-compliance, with no proof of having attended AA or having obtained a sponsor, your continuing care was terminated on 11 April 2000. However, you appear to have been permitted to continue serving in spite of your continued rehabilitation failure, which subsequently included a finding, on 17 August 2000, that you were unfit for duty due to your blood alcohol content.

On 1 October 2000, you were subject to a third NJP for an offense under Article 92 by violation of a lawful general regulation due to possessing and consuming alcohol on board a naval vessel, and for a violation of Article 112a due to wrongful use of marijuana. This final series of offenses resulted in your notification of processing for misconduct due to commission of a serious offense, a pattern of misconduct, drug abuse, and alcohol rehabilitation failure. You elected to waive all rights incident to this notice and the recommendation for your separation under Other Than Honorable (OTH) conditions was forwarded for review and decision. On 27 October 2000, Commander, ██████████, approved your separation for the primary reason of pattern of misconduct and directed your discharge under OTH conditions.

You previously applied to the Naval Discharge Review Board (NDRB) contending that youth and immaturity were the underlying cause of your misconduct and that your post-service behavior warranted consideration of an upgraded characterization. Your request was considered on 9 January 2014 and denied. With respect to your contentions of youth and immaturity, the NDRB did not concur and noted that “the record clearly reflects [your] willful misconduct.”

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 contentions that you were suffering from a mental health condition that the time of the underlying misconduct which resulted in your administrative discharge under OTH conditions. For the purpose of clemency and equity consideration, you submitted a Disability Benefits

Questionnaire (DBQ) for the Department of Veterans Affairs (VA), medical records, letters of support, and, in rebuttal to the initial advisory opinion, a psychiatric opinion which stated:

“it is more likely than not, and in fact highly likely, that the Veteran’s Major Depressive Disorder, recurrent, severe, was incurred during military service. It was clearly related to significant stressors during that period of service. It also had a significant role in disciplinary issues given that the Depressive Disorder led to a typical pattern of self-medication with excessive alcohol. This use of excessive alcohol lead to impulsivity, changes in mood, and eventually his behavior that led to his disciplinary issues in the Navy.”

Because you primarily contend that a mental health condition affected the circumstances of the misconduct which resulted in your discharge, the Board also considered the AO. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition during his military service aside from alcohol dependence. He did not exhibit any psychological symptoms or behavioral changes indicative of a mental health condition. He has provided no medical evidence in support of her claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his requested change for narrative reason for separation. Additional records (e.g., active duty medical records, post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his separation) would aid in rendering an alternate opinion.

The AO concluded, “it is my clinical opinion that 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.”

In response to the AO, you provided rebuttal evidence in support of your case. After reviewing your evidence, the AO remained unchanged.

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 NJPs, 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 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. Additionally, the Board found that your conduct showed a complete disregard for military authority and regulations. Furthermore, the Board concurred with the clinical conclusion that there is insufficient evidence to attribute your repeated substance abuse, assault, and use of illegal drugs, even after multiple opportunities for rehabilitation, to a mental health condition other than your alcohol use disorder. Although the Board favorably noted that you submitted several letters in support of your post-discharge character and accomplishments for consideration of clemency, the

Board found this evidence insufficient to overcome the repeated and escalating nature of your ARIs even after being afforded multiple second chances at rehabilitation and continued service.

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 the 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 is attached 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,

2/4/2025

