



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

Docket No. 6804-24  
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 13 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 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, 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 provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the Navy after disclosing a pre-service alcohol offense and commenced active duty on 14 June 1993. On 9 December 1993, you received non-judicial punishment (NJP) for larceny of two packs of cigarettes from the Navy Exchange.

On 13 June 1996, you self-referred for substance abuse screening and disclosed that you had used crystal methamphetamine every weekend for the past two years and had recently begun using "acid" and "ecstasy." You were recommended for Level III in-patient treatment.

On 10 August 1996, you were notified of pending administrative separation processing with a General (Under Honorable Conditions) (GEN) discharge by reason of misconduct due to drug abuse. After you waived your associated rights, the separation authority directed your discharge, and you were so discharged on 13 August 1996.

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 injured yourself when you fell down a fifteen foot shaft, used drugs and alcohol to cope with the pain, and you have a seventy-percent disability rating from the Department of Veterans Affairs (VA) for PTSD. For purposes of clemency and equity consideration, the Board considered your statement, and the VA application and evaluation notes 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 18 November 2024. The AO stated in pertinent part:

Petitioner contends he incurred mental health issues (PTSD) during military service, which may have contributed to the circumstances of his separation from service.

Petitioner submitted a partial VA outpatient record dated January 2023 noting a diagnosis of Generalized Anxiety Disorder despite having presented with self-diagnosed PTSD and Depression.

There is no evidence that the Petitioner was diagnosed with a mental health condition during his military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. He has provided a partial note indicating a diagnosis of Generalized Anxiety that is temporally remote to service. There is no evidence that the Petitioner fell down a stairwell while in service. 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.

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 NJP and disclosed drug abuse, 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. 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 and insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, your current diagnosis is too temporally remote from your service and your statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct. The Board agreed that additional records such as active duty medical records and post-service mental health records describing your diagnosis, symptoms, and their specific link to your separation would aid in rendering an alternate opinion. 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. Finally, the Board noted you provided no evidence, other than your personal statement, to substantiate your contentions.

As a result, the Board concluded that significant negative aspects of your service outweighed the positive aspects and continues to warrant a GEN 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,

1/23/2025

