



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

██████████
Docket No. 7031-24
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 and began a period of active duty on 28 December 1984. 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.

On 21 August 1985, you received non-judicial punishment (NJP) for Article 86 and Article 91. On 25 November 1985, Drug and Alcohol Program Advisor documented an impression you're your marijuana usage was an isolated incident and displayed no indication of dependency. On

27 November 1985, you received your second NJP for two specifications of being absent from your appointed place of duty, failure to obey an order to report to Executive Officer (XO) screening, wrongfully possessing drug paraphernalia, and wrongful use of marijuana.

Pursuant to your request, you were medically evaluated on 4 February 1986. During the evaluation you reported infrequent marijuana and cocaine use on an ongoing basis. Based on your admission, you were recommended for administrative separation due to your poor potential for further service.

Consequently, you were notified of administrative separation processing for misconduct due to drug abuse and commission of a serious offense. Based on your failure to respond to the notification within the prescribed period, you effectively waived your procedural rights. On 14 February 1986, your commanding officer recommended to the separation authority (SA) that you be discharged with an Other Than Honorable (OTH) characterization of service based on your documented misconduct. The CO commented in his recommendation letter:

“[Petitioner] has been a problem in both his attitude and conduct his entire time at this command. His actions reflect a total disregard for military authority and regulations. He has no potential for retention and indeed is a liability to this command and the Navy.”

On 19 February 1986, the SA approved the CO’s recommendation and directed you be discharged for drug abuse (use). On 26 February 1986, you were so discharged.

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 dispute the validity of the drug abuse findings in your case, the due process you received in your administrative separation processing, and the validity of your administrative separation. For purposes of clemency and equity consideration, the Board noted you provided documents from your Official Military Personnel File but no supporting documentation describing post-service accomplishments or advocacy letters.

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 5 November 2024. The Ph.D. stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His 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 substance use evaluations performed by the mental health clinicians. The Petitioner has provided no medical evidence in support of his claims. Additionally, there are some inconsistencies in the Petitioner’s current statements and his service record that raise doubt regarding his candor and the reliability of his recall. Currently, Petitioner claims that he did not use substances in service and was unjustly separated. However, in service, the Petitioner acknowledged casual substance use during his evaluation. Unfortunately,

there is insufficient evidence to establish clinical symptoms of a mental health condition in service or provide a nexus with his misconduct, which appears to be a continuation of pre-service behavior. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The Ph.D. concluded, "it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another 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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included drug offenses. 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 and cocaine 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 to attribute your misconduct to PTSD or another mental health condition. As explained in the AO, there are some inconsistencies in your current statements and your service record that raise doubt regarding your candor and the reliability of your recall. 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.

Regarding your contentions concerning your drug abuse findings, lack of due process, and administrative separation, the Board determined the presumption of regularity applies in your case. The Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. The Board observed that you provided no evidence, other than your statement, to substantiate your contentions. Therefore, the Board concluded the evidence presented was insufficient to overcome the presumption. Furthermore, the Board found strong evidence in your record to rebut your contentions. For example, it was documented in your record that you were apprehended with drug paraphernalia, incurred a positive urinalysis, and acknowledged casual marijuana and cocaine abuse while on active duty. Additionally, your administrative separation statement of awareness contains a signed certification from a commissioned officer that you failed to respond to the notification of administrative separation in a timely manner; thereby waiving your rights in accordance with service regulations. These documents in your record, in addition to the presumption of regularity, formed the basis for the Board's finding that you were properly processed and discharged for drug abuse in accordance with applicable service regulations. In reviewing the entirety of your record, the Board agreed with your CO's assessment that your conduct reflected a total disregard for military authority and regulations, and you had no potential for retention in the Navy.

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,

1/10/2025

