



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

██████████  
Docket No. 7315-24  
Ref: Signature Date

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████████████████  
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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 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 6 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 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO). Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

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

You were granted an enlistment waiver for marijuana use/possession. You enlisted in the Navy and began a period of active duty on 20 November 2002. On 22 April 2003 and 29 October 2004, you received two separate nonjudicial punishments (NJPs) for periods of unauthorized

absence (UA). On 15 November 2004, you received a third NJP for the wrongful use of marijuana. Consequently, you were notified of your pending administrative processing by reason of pattern of misconduct (POM) and drug abuse; at which time you waived your rights to consult with counsel and to present your case to an administrative discharge board. On 6 December 2004, you received a fourth NJP for another instance of wrongful use of marijuana. Subsequently, your commanding officer forwarded your administrative separation package to the separation authority recommending you be discharged with an Other Than Honorable (OTH) characterization of service adding,

“In two years of service [Petitioner] has not demonstrated the ability or the propensity to adapt his behavior to the high standards expected of U.S. Navy personnel. He has been to Captain’s Mast on four separate occasions, including two most recent for drug abuse. The drug abuse offense is further aggravated by the fact that he admitted to bringing drugs on base and using while in a restricted status. A review of his record revealed significant pre-service drug abuse, which he was granted an enlistment waiver. Despite being give this opportunity to serve, and having knowledge of that Navy’s ‘zero tolerance’ drug policy, he chose to continue to abuse drugs while on active duty. His conduct and substandard performance constitutes a severe departure of good order and discipline.”

Ultimately, the separation authority directed you be discharged with an Other Than Honorable (OTH) characterization of service and you were so discharged on 15 December 2004.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) seeking an upgrade to your characterization of service. The NDRB denied your requests, on 13 October 2016, after determining your discharge was proper as issued.

The Board carefully considered all potentially mitigating factors to determine whether the interest 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 your contentions that: (1) you were diagnosed with acute PTSD prior to being discharged, (2) you were assaulted while on the military base in your barracks room by three individuals, (3) the offenders were criminally convicted and sentenced to military prison, and (4) you were losing your mental stability following this event which caused you to make poor decisions. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

Based on your assertions that you incurred Post Traumatic Stress Disorder during military service, which may have contributed to the circumstances of your separation from service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO on 17 November 2024. The AO stated in pertinent part:

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. The Petitioner submitted two records that are undated and cannot be located within his available service record. Furthermore, his NDRB review dated 2016 notes, “The

NDRB requested the applicant's medical treatment records, but the VA was unable to locate them. Furthermore, the NDRB did not find any reference to a medical diagnosis of PTSD in the Applicant's service record to support his claim, and the Applicant did not provide any documentary evidence of a medical diagnosis..." The Petitioner entered into the Navy with pre-service marijuana use, and thus it [is] more likely that his misconduct was due to marijuana abuse. It is possible that the Petitioner suffered from some trauma symptoms following an assault, however there is no evidence at this time to indicate a nexus between his misconduct and the reported event. Additional records (e.g., active duty medical records in their entirety, post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to her 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 a thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined 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 that 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. Additionally, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to a mental health condition. As the AO explained, there is no evidence at this time to indicate a nexus between your misconduct and the reported event; and, given your pre-service marijuana use, it is more likely that your misconduct resulted from marijuana abuse. Lastly, the Board noted you were provided several opportunities to correct your conduct deficiencies; however, you continued to commit additional misconduct.

As a result, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service. 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,

1/23/2025

