



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

Docket No. 7827-24  
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 31 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, 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). 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 and commenced active duty on 22 September 1978. After a period of continuous Honorable service, during which you received three non-judicial punishments (NJP) for possession of hashish, unauthorized absence (UA), and misbehavior of a sentinel or lookout, you reenlisted on 16 September 1982 and commenced a second period of active duty.

On 16 April 1983, you were issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and/or conduct; specifically for a Driving While Intoxicated (DWI) offense on 26 April 1983. You were advised that any further deficiencies in your

performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 12 July 1983, you received Page 13 counseling for substance abuse self-referral due to a second offense. You were again advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 21 November 1983, you received NJP for three specifications of failure to go to appointed place of duty. On 20 December 1983, you received NJP for wrongful use of marijuana. On 27 December 1983, you began thirty-day in-patient substance abuse treatment that you completed, on 25 January 1984, with a diagnosis of polychemical abuse with psychological dependence and a poor prognosis. On 31 May 1984, you tested positive for Tetrahydrocannabinol (THC) on a urinalysis.

Consequently, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to drug abuse and you waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board. On 29 June 1984, you received NJP for wrongful use of marijuana. On 5 July 1984, your command received another message indicting you had tested positive for THC on 16 July 1984. Ultimately, the separation authority directed your discharge with an OTH characterization of service and you were so discharged on 23 August 1984. Prior to your discharge, you declined in-patient treatment at the Department of Veterans Affairs (VA).

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 did not have a drug abuse problem, you voluntarily submitted to alcohol rehabilitation, you were kicked out after you decided the program was not for you because you did not want to talk about your childhood abuse, you desire VA medical benefits, and you have one period of Honorable service from 1978 to 1982. For purposes of clemency and equity consideration, the Board considered your statement and the advocacy letter 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 16 December 2024. The AO stated in pertinent part:

Petitioner contends he incurred mental health concerns during military service, which may have contributed to the circumstances of his separation.

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His substance use disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. He has provided no additional medical evidence to support his claims. Unfortunately, his personal statement is not sufficiently detailed to establish symptoms of a mental health condition other than substance use disorder in service. 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 AO concluded, "it is my clinical opinion that there is in-service evidence of a substance use disorder. There is insufficient evidence of another mental health diagnosis that may be attributed to military service. There is insufficient evidence to attribute his misconduct solely to a mental health condition, other than substance use disorder."

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 NJPs in your final enlistment, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved multiple 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 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. The Board also considered the likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board noted that you were given multiple opportunities to address your conduct issues but you continued to commit misconduct; which ultimately led to your OTH discharge. Additionally, the Board concurred with the AO and determined that, while there is in-service evidence of a substance use disorder, there is insufficient evidence of another mental health diagnosis that may be attributed to military service and insufficient evidence to attribute your misconduct solely to a mental health condition, other than substance use disorder. As explained in the AO, you provided no medical evidence in support of your claim. 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, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order and discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Kurta 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.

In reviewing your record, the Board believes that you may be eligible for veterans' benefits which accrued during your prior period of Honorable service. However, your eligibility is a matter under the cognizance of the VA. In this regard, you should contact the nearest VA office concerning your rights, specifically, whether or not you are eligible for benefits based on your first period of Honorable service.

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,

2/26/2025

