



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

██████████
Docket No. 8348-24
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 5 March 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, 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 entered active duty on 5 February 1990. Upon entry onto active duty, you admitted to illegal use of a controlled substance and criminal mischief while in the Delayed Entry Program but a waiver was not required.

On 16 November 1990, you began a period of unauthorized absence (UA) that ended with your surrender on 13 December 1990. On 21 December 1990, you received non-judicial punishment (NJP) for 27 days of UA, failure to obey a lawful order by drinking underage, willfully damaging

government property, wrongful use of marijuana, disorderly conduct, and communicating a threat. On 26 December 1990, you were screened by a medical professional and found nondependent for marijuana and alcohol. Consequently, you were notified of administrative separation processing for misconduct commission of a serious offense and drug abuse. After you waived your rights, the Commanding Officer (CO) made his recommendation to the Separation Authority (SA) that you be discharged with an Other Than Honorable (OTH) characterization. The SA accepted the recommendation and you were so discharged on 10 January 1991.

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 due to untreated psychological issues that were originally discovered during boot camp, and later diagnosed while onboard your ship, played a very large part of your behavior, you requested to go TAD to the Gulf so you could somehow deal with your internal anger, that request was denied and you became angrier, your anxiety and depression grew, you were never offered the services of medical staff to deal with your issues, and there may have been a different outcome if you had received treatment. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

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 14 January 2025. The Ph.D. stated in pertinent part:

There is evidence that the Petitioner was diagnosed with symptoms of anxiety and possibly depression, although no formal diagnoses were made aside from “Alcoholism and Homesickness.” There is evidence that the Petitioner had extensive pre-service behavioral and legal issues. He attended therapy pre-service. Given that his behavioral problems continued in service, it is unlikely that therapy would have been of much benefit. Regardless, it is possible that some of his misconduct was caused by mental health issues that existed prior to service and were worsened by the stressors of service. However, knowingly partaking in marijuana, willful damage to government property and communicating a threat are more aligned with a characterological diagnosis.

The Ph.D. concluded, “it is my clinical opinion that there is sufficient evidence of mental health symptoms that were likely exacerbated by military service. There is insufficient evidence to attribute all of his misconduct to a 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 NJP, 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 observed you were given an opportunity to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your OTH discharge.

Your conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of your command. Further, the Board concurred with the AO and determined there is insufficient evidence to attribute all of your misconduct to a mental health condition. As explained in the AO, it is possible that some of your misconduct was caused by mental health issues that existed prior to service and were worsened by the stressors of service. However, knowingly partaking in marijuana, willful damage to government property, and communicating a threat are more aligned with a characterological diagnosis. 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.

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 and commends you for your post-discharge accomplishments, 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,

3/20/2025

