



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

██████████  
Docket No. 8552-24  
Ref: Signature Date

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████████████████

Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 3 February 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). 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 enlisted in the Navy and began a period of active duty on 7 July 2003. On 10 November 2004, you received nonjudicial punishment (NJP) for a period of unauthorized absence (UA),

insubordinate conduct, and the wrongful use of cocaine. Consequently, you were notified of you were being recommended for administrative from the Navy by reason of misconduct due to drug abuse. You waived your right to consult with counsel and to present your case to an administrative discharge board. Your commanding officer forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service adding,

“Since arriving to this command, [Petitioner] has been an administrative burden. He was informally counseled on numerous occasions for minor infractions such as his inability to make it to work or other assigned duties on time. [Petitioner] started at this command working in the command’s administration department, and subsequent to a recommendation from a disciplinary review board, was reassigned to my port operations department. Although [Petitioner] appeared to turn himself around, in recent months, his attitude and demeanor have declined. Resources were made available to [Petitioner]. As a result of the recent positive urinalysis for cocaine, the reason for [Petitioner’s] behavior is clear. [Petitioner] is aware of the Navy’s ‘Zero Tolerance’ policy and as such understands the consequences of his actions.”

The SA approved the recommendation, and you were so discharged on 24 November 2004.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade to enhance employment and educational opportunities. The NDRB denied your request for an upgrade, on 19 September 2017, based on their determination that 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 you incurred mental health concerns during military service. Specifically, you stated you entered the military immediately after graduating at the top of your class from the National Guard Youth Challenge Program. During boot camp, you were promoted to Assistant Recruit Chief Petty Officer and maintained your leadership position throughout training. At your first duty station, you were assigned to the administrative office, where you quickly became one of the most trusted seamen on base. Your responsibilities included regularly driving the base captain to events and setting up the captain’s presentations. Additionally, you were an active member of the Color and Honor Guard, participating in multiple community events, and you assisted the Chaplains with funeral services. Despite your strong performance, you were removed from the administrative office and reassigned to port operations based on false accusations made by your Chief/E-7. At port operations, you were subjected to demeaning tasks, such as scraping bird droppings off the pier, and endured mockery, ridicule, and persistent harassment from port operations personnel. The hostile environment severely impacted your well-being, leading to severe depression and panic attack; something you had never experienced before. It was only during these episodes of extreme distress that you made choices that ultimately jeopardized your naval career. You added that: (1) you would have never made these choices if you were not suffering from severe mental depression and undiagnosed ADHD (attention deficit hyperactivity disorder) and (2) you were treated unfairly after requesting a

transfer to another department to improve your skills. 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 mental health concerns from sexual assault/harassment 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. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. 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 insufficient evidence of mental health concerns 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 NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved 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 that there is insufficient evidence of mental health concerns that may be attributed to military service or your misconduct. As the AO explained, you did not provide any medical evidence in support of your claims. Therefore, the Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also 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, 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 that 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,

3/4/2025

