



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

██████████  
Docket No. 8685-24  
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 10 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 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, 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional and your response to the AO.

You enlisted in the Navy and commenced active duty on 25 October 2001. On 27 April 2004, you received non-judicial punishment (NJP) for assault consummated by battery. Additionally, you were issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and/or conduct. 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 23 August 2005, you were convicted at Summary Court-Martial (SCM) of violating Article 112a of the Uniform Code of Military Justice, by wrongfully using a controlled substance

(marijuana). You were sentenced to 60 days of restriction. Consequently, you were notified of administrative separation processing for pattern of misconduct and drug abuse. You elected to have your case heard before an Administrative Discharge Board (ADB). The ADB was held on 17 October 2005 and resulted in unanimous findings that you committed misconduct in support of both reasons for separation. The ADB recommended that you be separated with an Under Other Than Honorable Conditions (OTH) characterization of service. Your Commanding Officer concurred with this result and you were so discharged on 21 November 2005.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 27 October 2020, based on their determination that your discharge was proper as issued.

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 upgrade your characterization of service to and change your narrative reason for separation code to Secretarial Authority; with corresponding changes to your separation and reentry codes. You contend that: (1) as a matter of justice, liberal consideration and full relief is appropriate because service-related traumas caused you to develop severe symptoms including suicidality, that the PTSD symptoms in turn led to maladaptive coping mechanisms such as substance abuse and unauthorized absence, and that the PTSD mitigates your misconduct, and (2) as a matter of clemency, that your service came at a great personal cost, that you still struggle with service-connected PTSD to this day, that your actions at the end of your service, caused by your then-undiagnosed PTSD, did not negate the meritorious quality of your service as a whole, that throughout the majority of your service, shipmates recognized your hardcore work ethic and laudable efforts to mentor others; that under the Wilkie memo, the Board is empowered to weigh the letters you provided in support, and your dedication to sobriety and proper treatment of your mental illnesses in the years since discharge, and, for all these reasons, may grant relief as a matter of clemency. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application; including your legal brief with exhibits. Among them, your personal statement, service medical records, three advocacy letters, service record documents, VA Rating Decision, and letters from your social worker and psychologist.

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 was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His personality disorder and depression diagnoses were 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. Temporally remote to his military service, the VA has granted service connection for mental health concerns. A civilian mental health provider with a military background has diagnosed PTSD. It is difficult to attribute his misconduct solely to symptoms of PTSD or another mental health condition, particularly given pre-service marijuana use. 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 and post service evidence from the VA of mental health concerns that may be attributed to military service. There is post-service evidence from a civilian provider of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct solely to PTSD or another mental health condition."

In response to the AO, you provided rebuttal materials that supplied additional clarification of the circumstances of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

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 NJP and SCM conviction, 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. 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 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. Additionally, the Board concurred with the AO and determined that, although there is in-service and post-service evidence from the VA of mental health concerns that may be attributed to your military service, and post-service evidence from a civilian provider of a diagnosis of PTSD that may also be attributed to your service, there is insufficient to attribute your misconduct solely to PTSD or another mental health condition. As the AO explained, it is difficult to attribute your misconduct solely to symptoms of PTSD or another mental health condition. 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, 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,

3/31/2025

