



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

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Docket No. 8876-24
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 Board waived the statute of limitation 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 17 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, and applicable statutes, regulations, and policies, to include to 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) of a qualified mental health provider and your response to the AO.

You enlisted in the Marine Corps after being granted waivers for your arrest history and pre-service marijuana use and began a period of active duty on 6 January 1987. On 27 April 1988, you accepted nonjudicial punishment (NJP) for violation of Article 86 of the Uniform Code of Military Justice (UCMJ) due to a one-day period of unauthorized absence (UA). On 6 June 1988, you were issued administrative counseling documenting that you had failed to attend remedial physical training. You were later issued an additional counseling warning you that continued deficiencies in performance and conduct could result in administrative separation and advising you to correct your performance, attitude, substandard appearance, and overdrawn

account. You accepted a second NJP, on 30 June 1988, for a violation of Article 112a of the UCMJ due to wrongful use of amphetamine/methamphetamine. On 28 September 1988, you were counseled for insubordination toward a warrant or petty officer. On 12 October 1988, you were convicted by Summary Court-Martial (SCM) for another violation of Article 112a; again for wrongful use of amphetamine/methamphetamine. Then, on 19 December 1988, you were convicted by a second SCM for an additional Article 112a offense for wrongful possession of marijuana and for two specifications under Article 92 for violation of a lawful general order by wrongful possession of a 1.25 pound block of C-4 explosives and for wrongful possession of a white star cluster. On 19 January 1989, you were subject to a third NJP for another violation of Article 86 due to failure to go at the time prescribed to your appointed place of duty. Consequently, you were notified of processing for administrative separation by reason of misconduct due to drug abuse and voluntarily elected to waive your right to a hearing before an administrative separation board. The recommendation for your discharge under Other Than Honorable (OTH) conditions was approved by the separation authority and you were so discharged on 6 March 1989.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie, Kurta, and Hagel Memos. These included, but were not limited to, your desire to upgrade your discharge and change your narrative reason for separation. You contend that you suffered from an underlying mental health condition due to your experience of childhood sexual abuse, this contributed to your drug dependence issues, and you believe either excuses or at least mitigates your discharge under liberal consideration policy. In your personal statement to the Board, you elaborated that your mother received a kidney transplant during your military service which resulted in complications and her eventual death several months after your discharge. You also state that you have achieved and maintained sobriety and, as a result, have been granted custody of your daughter; whom you have raised well in addition to your other four children and who submitted a letter of support on your behalf. For the purpose of clemency and equity consideration, you also submitted your service health records and reference for the Disability Evaluation System dual processing guidance.

Because you contend that either a mental health condition or a traumatic brain injury (TBI) affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His substance use 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. There is no evidence of another mental health condition, and he has provided no medical evidence to support his claims.

Although there is evidence that the Petitioner reported a head injury during his preenlistment physical, there is no evidence of on-going or residual symptoms treated during service, which would be consistent with TBI. The Petitioner has provided no medical evidence to support his claims. He was found physically qualified for service and there is no evidence of error in the determination.

The Petitioner received a waiver to enter service for reported pre-service marijuana use. In service, he reported use of methamphetamine since 1984. There is no medical evidence that his substance use was to self-medicate TBI or other symptoms.

Unfortunately, his in-service misconduct appears to be consistent with a substance use disorder, rather than evidence of another mental health condition incurred in or exacerbated by military 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.

In response to the AO, you provided additional evidence in support of your application. After reviewing your rebuttal evidence, the AO remained unchanged.

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 NJPs and SCMs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact 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. Further, the Board found that your conduct showed a complete disregard for military authority and regulations. The Board observed you were given multiple opportunities 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 that there is insufficient evidence of a mental health condition or TBI that may be attributed to military service and there is insufficient evidence to attribute your misconduct to TBI or another mental health condition¹; other than substance use disorder. As explained in the AO, there is no evidence of on-going or residual symptoms of TBI during service; which would be consistent with TBI. In addition, you provided no medical evidence to support your claims. 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 sobriety, 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,

¹ Additionally, even if there had been evidence to support your claim of self-medication, the Board found no discernable nexus between self-medication of a mental health condition and your wrongful possession of dangerous explosive military property in violation of regulations.

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,

4/8/2025

