



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

██████████
Docket No. 9057-24
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 21 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider. Although you were offered the opportunity to respond to the AO, 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 based on the evidence of record.

You enlisted in the U.S. Navy and began a period of active duty service on 11 January 1983. Your pre-enlistment physical examination, on 26 October 1982, and self-reported medical

history both noted no psychiatric or neurologic issues, symptoms, history, or counseling. As part of your enlistment application, you disclosed pre-service “narcotics, dangerous drugs, or marijuana” use. You also disclosed a civilian conviction for marijuana possession. On 11 January 1983 you signed and acknowledged the “USN Drug Abuse Statement of Understanding.” On 17 January 1984, you reported for duty on board the ██████████.

On 14 September 1984, you received non-judicial punishment (NJP) for the wrongful use of a controlled substance (marijuana). You did not appeal your NJP. On the same day, a Medical Officer (MO) conducting a drug abuse interview with you determined you were psychologically dependent on marijuana and recommended you for inpatient detoxification.

On 8 October 1984, you commenced inpatient drug rehabilitation treatment. However, on 29 November 1984, you “unsuccessfully” completed your drug abuse rehabilitation treatment program. On such date, you acknowledged that residential drug rehabilitation treatment was a one-time opportunity per career and that a return to drug abuse behavior will be grounds for a punitive or under Other Than Honorable conditions (OTH) discharge. On 30 November 1984, you reported for duty back on board the ██████████.

On 16 January 1985, you commenced a period of unauthorized absence (UA). Your UA terminated on 19 January 1985. On 1 February 1985, you received NJP for two (2) separate UA specifications; one of which was your three-day UA.

Consequently, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to drug abuse; as evidenced by a series of positive urinalysis results and NJP for marijuana usage. You waived your rights to consult with counsel, submit a written statement, and to request a hearing before an administrative separation board.

On 14 February 1985, an MO conducted another drug abuse interview with you. The MO reported, in part, the following:

Continues to use MJ. Understands Navy Policy. States that MJ does not increase such performance, but still states he will use MJ, despite wife’s concern and pending discharge.

Uses MJ for pleasure - regardless of consequences.

Stated has experimented with LSD, cocaine, amphetamines, and barbiturates - however denied recurrent usage.

Psychologically dependent on THC.

Member not eligible for second rehab program, and should be held responsible for actions and behavior.

On 18 February 1985, your commanding officer (CO) recommended to the Separation Authority

(SA) that you should receive an OTH discharge characterization. In his recommendation, the CO stated, in part:

On 14 Sep 84, SNM appeared at CO's Mast for wrongful use of marijuana. He admitted to having a problem with marijuana and was referred to NDRC, ██████████ ██████████ for treatment. He unsuccessfully completed treatment on 29 Nov 84 and returned onboard. On 18 Jan 85 he participated in a command directed urinalysis and his sample was screened THC positive. Due to his failure to comply with Navy regulations concerning drug abuse he is being processed for discharge.

On 28 February 1985, the SA approved and directed your separation for misconduct due to drug abuse with an OTH discharge characterization. In the interim, your separation physical examination, on 18 March 1985, noted no psychiatric or neurologic issues or symptoms. Ultimately, on 21 March 1985, you were discharged from the Navy for misconduct with an OTH characterization of service and were assigned an RE-4 reentry code.

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: (a) living with an OTH discharge has been a disproportionately severe punishment for only marijuana usage off duty, (b) as a result of this discharge, your mental and emotional well being has suffered for decades; your depression became unbearable on active duty and while dealing with command disciplinary procedures associated with your off duty use of marijuana, (c) your OTH has severely impacted your ability attain stable employment because of the stigma that comes with it, (d) you are homeless, currently live in a shelter, and recently you were admitted to the hospital for depression and suicidal ideations, and (e) because of your honorable service and the fact that your OTH discharge was a disproportionate punishment for your off duty use of marijuana, you would respectfully request consideration of upgrading and changing your discharge. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records and issued an AO dated 7 January 2025. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner contends he incurred mental health concerns during military service, which may have contributed to his separation...Petitioner entered active duty...acknowledging pre-service marijuana use and a conviction for possession of marijuana...The Petitioner contended he incurred mental health concerns during military service, which contributed to his misconduct.

In September 1984, the Petitioner was evaluated and endorsed psychological dependence on marijuana, which he reported using since age 14. He was recommended for inpatient detoxification treatment.

In February 1985, the Petitioner received NJP for two periods of unauthorized absence (UA) totaling three days. He was evaluated and endorsed psychological dependence on marijuana. He reported having “experimented with LSD, cocaine, amphetamine and barbiturates – however denies recurrent usage.” The clinician noted that he was “not eligible for second rehab program and should be held responsible for actions and behavior.”

During military service, he was evaluated and diagnosed with a substance use disorder, which had existed prior to enlistment. There is no evidence of another mental health condition incurred in or exacerbated by military service, or that he exhibited any psychological symptoms or behavioral changes indicative of another 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, particularly given pre-service behavior which appears to have continued in service.

The AO concluded, “it is my clinical opinion that there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to a mental health condition, other than possible substance use disorder.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your drug-related misconduct was not due to any mental health-related conditions or symptoms. Moreover, even if the Board assumed that your misconduct was somehow attributable to any other mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. 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.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 2.8 in conduct. Navy regulations in place at the time of your discharge recommended a minimum trait average of 3.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your misconduct was not minor in nature and that your conduct marks during your active duty career were a direct

result of your serious misconduct and a failure to conform to basic military standards of good order and discipline, all of which further justified your OTH characterization.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that illegal drug use is contrary to Navy core values and policy, renders such service members unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. 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 determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. Moreover, 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. Finally, 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.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard, the Board concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. 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. 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,

4/1/2025

