



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

██████████  
Docket No. 9106-24

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 24 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, 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). 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 9 October 2001. On 21 November 2002, a summary court-martial (SCM) found you guilty of unauthorized absence (UA) for

16 days, two specifications of wrongfully using marijuana and one specification of possessing marijuana. You were sentenced to 30 days of confinement, forfeiture of 2/3 pay per month for one month, and reduction in rank to E-1. Consequently, you were notified that you were being recommended for administrative discharge from the Navy for drug abuse; at which time you waived your right to consult with counsel and to present your case to an administrative discharge board. The commanding officer forwarded your administrative discharge adding, "[Petitioner] was directed by ██████████ ) to report to ██████████ for Limited Duty on 21 August 2002, however he failed to report until 6 September 2002. On 24 September 2002, we received a positive urinalysis report from a specimen he provided to the Navy Drug Laboratory. While awaiting discipline action, he was apprehended by the Naval Station ██████████ Department for suspicion of using illegal substances. The Gate sentry smelled what appeared to be marijuana and saw what appeared to be in light clouds of smoke escaping from [Petitioner's] vehicle as ID checks were being conducted. He was administered his rights and provided a urine sample. On 1 November 2002, we received a second positive urinalysis report on this Sailor. [Petitioner] refuses to follow the most basic rules and Regulations and has blatantly violated the Navy's "zero tolerance policy" three times. He clearly has no potential for continued service, and I most strongly recommend that he be discharged under Other Than Honorable conditions." The SA directed your Other Than Honorable discharge from the Navy by reason of misconduct due to drug abuse and you were so discharged on 10 January 2003.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 9 July 2015, 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: (1) during your service you suffered from undiagnosed PTSD and significant mental health challenges stemming from surgery and the limitations of your resulting disability, (2) despite your dedication, these conditions went untreated, and you never received proper medical or mental health care while in uniform, (3) as your service was coming to an end, you were assigned to a temporary unit while awaiting a medical discharge, (4) after a single positive urinalysis, your medical discharge was revoked, and you were instead issued an Other Than Honorable (OTH) discharge, (5) at no point were you offered substance abuse treatment or care for your injury, leaving you without the support you desperately needed, (6) since your discharge 23 years ago, the VA has officially recognized your PTSD and mental health conditions, granting you disability compensation, (7) you now have undeniable proof that these struggles have hindered your ability to advance in life, (8) the burden of an OTH discharge has compounded your hardships, limiting your opportunities, and restricting access to vital benefits that could have changed your trajectory, (9) today, your physical and mental health are deteriorating rapidly, (10) you are in the final stages of your life, devoted to Jesus Christ, and seeking the opportunity to leave a legacy of honor for your children, who need you now more than ever, (11) this discharge upgrade is not only a matter of justice but also a chance to restore dignity to your service, and (12) recognizing you as a veteran would grant you the acknowledgment you have long deserved, ensuring that your service to your country is honored and respected. This upgrade could save your life. 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 PTSD and other mental health issues 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. Temporally remote to his military service, the VA has granted service connection for mental health concerns. Unfortunately, available records are not sufficiently detailed to 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 post-service evidence from the VA of a mental health condition that may be attributed to military service. There is insufficient evidence of a diagnosis of PTSD. There is insufficient evidence to attribute his misconduct to PTSD or another 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 SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it included multiple drug offenses. The Board determined that illegal drug use and possession 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 there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service or your misconduct. As explained in the AO, your post-service diagnosis of a mental health condition is temporally remote to your military service. Further, the Board noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations, disability ratings, and/or discharge classifications are not binding on the Department of the Navy and have no bearing on previous active duty service discharge characterizations. Finally, 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.

As result, the Board determined that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service. 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 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,

3/18/2025

