



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

██████████
Docket No. 9153-24
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 28 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 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. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the Navy with a pre-service waiver for admitted drug use and began a period of active duty on 13 August 1998. However, your initial urinalysis screening, taken on 14 August 1998, was reported as having a positive result for marijuana use. Consequently, on 20 August 1998, you were notified of processing for involuntary administrative discharge by reason of defective enlistment or induction, due to erroneous enlistment as evidenced by your confirmed positive entrance urinalysis test results. You elected not to make a statement and were discharged, on 26 August 1998, with an uncharacterized entry level separation for the narrative reason of "Erroneous Entry – Drug Abuse."

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 to “medical or general” in order to obtain benefits and your contention that your discharge was unfair because you were set up for failure, you needed marijuana for medical reasons of anxiety with panic attacks and post-traumatic stress disorder (PTSD), these conditions worsened after your enlistment when “cadets” committed suicide around you, your discharge was unjust because it resulted in a bad mark on your record that has hindered your employment and tarnished your reputation, and your discharge has resulted in the denial of several jobs. In support of your contentions and for the purpose of clemency and equity consideration, you submitted evidence of your post-service accomplishments, hospital records, and a letter from your “marijuana doctor” regarding your medical prescription for marijuana.

Because you contend that PTSD or another mental health condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition or suffered from PTSD while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He did not submit any medical evidence in support of his claim. He submitted one post-service medical encounter note that indicated diagnoses of depression and anxiety; however, the rationale for the diagnoses was not included. His personal statement is not sufficiently detailed to establish clinical symptoms 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) would aid in rendering an alternate opinion.

The AO concluded, “it is my clinical opinion that there is insufficient evidence of a mental health condition that existed while in service. There is insufficient evidence to attribute his misconduct to a mental health condition.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your uncharacterized entry level separation remains appropriate. The Board observed that you were in an entry level status at the time of your administrative discharge; which applies by definition to all service members, regardless of branch, who have not completed more than 180 days of continuous active duty service. While there are exceptions to this policy in cases involving exceptional performance or misconduct, the Board determined neither applied in your case. Additionally, the Board concurred with the AO that there is insufficient evidence to attribute your positive urinalysis at the time of your initial entry to active duty to a mental health condition which existed during your military service. As explained in the AO, your medical evidence indicates a diagnosis of depression and anxiety; however, the rationale for the diagnoses was not included. Based on the evidence you provided, the Board agreed there was insufficient evidence to establish clinical symptoms or provide a nexus with your misconduct. 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.

Therefore, 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 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 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,

4/15/2025

