



**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. 9667-24  
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 18 April 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 Navy and began a period of active duty on 9 September 1993. On 20 January 1994, you received nonjudicial punishment for a violation of Article 86 of the Uniform Code of Military Justice (UCMJ) due to an unauthorized absence (UA) of approximately four hours. In both February 1994 and May 1994, you were issued administrative counseling advising you of the Navy's policy regarding drug abuse. On 7 October 1994, the Naval Drug Laboratory reported your drug urinalysis screening as positive for cocaine use. You then received a second NJP for violation of Article 112a due to wrongful use of a controlled substance. Finally, you received a third NJP, on 7 February 1995, for another Article 86 violation due to 10.5 hour period of UA. Subsequently, you were notified of processing for misconduct due to drug abuse and pattern of misconduct.

You elected to voluntarily waive your right to a hearing before an administrative discharge board and the recommendation for your separation under Other Than Honorable (OTH) conditions was approved for the primary reason of a pattern of misconduct. Ultimately, you were so discharged on 9 March 1995.

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 to change your narrative reason for separation, separation code, and reentry code to reflect a Secretarial Authority discharge. You contend that your prejudicial discharge was unduly harsh, would not have been issued under current policies, and you believe would have favored intervention and rehabilitation. You state that you took responsibility for your misconduct and that, rather than serving a meaningful purpose, your discharge reminds you of the stress and family challenges you faced, without support, during your nuclear pipeline studies in the Navy. Additionally, you contend that you experienced mental health concerns during your military service. In support of your contentions and for the purpose of clemency and equity consideration, you provided a legal brief, a personal statement, your military and service health records, letters of support, academic articles regarding the stigma of mental health care and treatment of substance abuse, current guidance regarding the Navy's Substance Abuse Rehabilitation Program, relevant policy memoranda, and your student welcome package from your Navy nuclear pipeline training program.

Because you based your claim for relief primarily on your contentions that you experienced a mental health condition which you believe may have mitigated the circumstances of the misconduct which resulted in 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 while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He submitted a number of articles and character reference letters, but no medical evidence that directly links his behavior in service to a mental health condition. 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."

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

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included 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 cocaine use in any form is still against Department of Defense regulations, is not permitted for recreational use while serving in the military and continues to constitute a significant offense even within the civilian sector. Additionally, 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. Of particular concern was the fact you continued to commit misconduct after your NJP for drug abuse. The Board found that your conduct showed a complete disregard for military authority and regulations.

Finally, the Board concurred with the AO that insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, there is no evidence that you were diagnosed with a mental health condition while in military service or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition during that time. 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. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your serious misconduct more than outweighed the potential mitigation offered by any mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service.

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 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,

5/13/2025

