



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. 10100-24
Ref: Signature Date

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Dear ■■■■■■

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 7 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 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional. Although you were provided with an 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 Navy after disclosing pre-service marijuana use and commenced active duty on 8 February 1988.

On 30 November 1989, you received non-judicial punishment (NJP) for unauthorized absence (UA) and dereliction of duty. On 21 March 1990, you received NJP for wrongful use of a controlled substance. On 11 April 1990, you received a substance abuse evaluation where you

reported testing positive for marijuana and crystal methamphetamine. You denied previous drug use and indicated that you used the drugs to get kicked out of the Navy because you were angry about being away from home for 10 months and that the collision at-sea delayed your return home to your family. On 17 April 1990, you received another NJP for wrongful use of a controlled substance.

Consequently, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to drug abuse. You waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board. On 1 May 1990, the separation authority directed your discharge with an OTH characterization of service. On 2 May 1990, you received NJP for two specifications of UA and failure to obey a lawful order. You were discharged with an OTH characterization of service on 7 May 1990.

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 to change your discharge characterization of service and your contentions that your misconduct is mitigated by PTSD resulting from when your ship collided with a merchant ship on 12 November 1989. For purposes of clemency and equity consideration, the Board considered your statement, the advocacy letters, and photograph you provided.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 24 February 2025. The AO stated in pertinent part:

Petitioner contends he incurred mental health issues (PTSD) during military service, which may have contributed to the circumstances of his separation from service.

Petitioner was evaluated by medical personnel after this last infraction. Note reads, "He reports having positive urinalysis for marijuana and crystal methamphetamine. He reports taking the drugs on purpose to get kicked out of the Navy. He is angry with the Navy and being away from home for 12 months. His ship had a collision at sea delaying his return...He is currently on restriction and has only seen his son 3 times. He has financial difficulties and is concerned about bills." He was diagnosed with Polysubstance abuse, and psychosocial stressors were noted.

There is no evidence that the Petitioner was diagnosed with a mental health condition during his military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. He was diagnosed with Polysubstance Abuse and did mention his ship's collision during an evaluation. However, he did not indicate any PTSD symptoms or concerns at that time – only that he was frustrated that the collision delayed his coming home. He did not submit any medical evidence in support of his claim. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his requested change for narrative reason for separation.

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

After thorough review, the Board concluded your 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 involved 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. 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. The Board also considered the AO’s observation that although you mentioned the ship’s collision during your substance abuse evaluation, it was only in the context of your frustration in the delay it caused in returning home to your family. The Board concurred with the AO and determined that there is insufficient evidence of a mental health condition that existed in service and insufficient evidence that your misconduct could be attributed to a mental health condition.

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 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,

4/21/2025

