



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


Docket No. 10900-24
Ref: Signature Date





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. 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 the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Navy with a pre-service history of marijuana use and began a period of active duty on 18 October 1993. On 3 October 1994, you were subject to nonjudicial punishment (NJP) for violations of the Uniform Code of Military Justice (UCMJ) that included Article 91, for being disrespectful in language toward a superior petty officer; Article 134, for drunk and disorderly conduct and Article 134, for two specifications of communicating a threat. In January 1995, you self-referred to substance abuse counseling for drug abuse. A medical evaluation documented

your use of marijuana and methamphetamine. You were found not to be drug dependent and admitted to using marijuana as a means to avoid your service obligation. Consequently, you were notified of processing for administrative separation by reason of misconduct due to commission of a serious offense and due to drug abuse. You did not desire to consult legal counsel and elected to waive your right to a hearing before an administrative discharge board. In his recommendation for your discharge under Other Than Honorable (OTH) conditions, your commanding officer noted that you had been found not to be drug dependent, had a negative urinalysis for drug use, and were likely using your self referral as a means to be separated; therefore, you did not meet the criteria for voluntary self-referral. Your separation under OTH conditions was approved for the primary basis of commission of a serious offense and you were so discharged on 20 July 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 your contentions that you have been diagnosed with Attention Deficit Disorder and Anxiety, you self-medicated with alcohol during your military service, this led to your misconduct and you are now on medication for these conditions and no longer drink alcohol. In support of your contentions and for the purpose of clemency and equity consideration, you submitted letters from your primary care manager and clinical psychologist documenting your diagnoses and treatment.

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 your misconduct, 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 during his military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. He submitted evidence of post-service diagnoses of ADHD and Generalized Anxiety Disorder. However, neither letter notes a nexus between his post-service diagnoses and in-service misconduct. Additional records (e.g., active duty medical records, post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his separation) would aid in rendering an alternate opinion.

The AO concluded, "there is insufficient evidence of a mental health condition that occurred in service. There is insufficient evidence to attribute his misconduct to a mental health condition."

After thorough review, the Board concluded the potentially mitigating factors you submitted for consideration were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and admitted drug abuse, outweighed the mitigating factors you submitted for consideration. In making this finding, the Board considered the seriousness of your misconduct and the fact it included 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. Further, 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. Finally, the Board

concluded with the AO regarding the insufficiency of mental health evidence in support of your contentions. As explained in the AO, the evidence you submitted is insufficient to provide a nexus between your post-service diagnoses and in-service misconduct. 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.

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,

5/7/2025

