



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

██████████
Docket No. 11804-24
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 12 May 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 provider. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 25 May 1994. The following day, you were administratively counseled that you were being retained in spite of a defective enlistment due to fraudulent entry after you failed to disclose pre-service civil involvement in an underage drinking offense. You served your first period of enlistment with a single nonjudicial punishment (NJP) for a period of unauthorized absence (UA) and immediately reenlisted on 18 November 1997. You then received the Good Conduct award on 9 August 1998.

In November 1998, you had surgery to remove a benign brain tumor. Beginning in January 1999, you sought medical treatment for headaches with medical notes questioning whether your headaches might be secondary to trauma or to the tumor. Your headaches continued and, on 16 June 1999, you were found not physically qualified for duty as an air traffic controller; after which your commanding officer strongly recommended a forced lateral conversion of your

rating. On 11 April 2000, you were subject to NJP for a violation of the Uniform Code of Military Justice (UCMJ) under Article 112a due to wrongful use of marijuana.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214) reveals that you were separated, on 30 June 2000, with an Other Than Honorable (OTH) characterization of service, narrative reason for separation of "Misconduct," separation code of "HKK," and reentry code of "RE-4." Your separation code is consistent with a drug abuse discharge.

You previously applied to the Naval Discharge Review Board (NDRB) contending that your discharge warranted an upgrade on the basis of your overall record of good conduct and performance of duty, to include awards, and the mitigating factor of your medical inability to perform in your air traffic control rating due to your extreme headaches and the resulting depression caused by both of those factors. You stated that you had resorted to using marijuana to help cope with your ongoing medical issues and that you should have received a medical discharge due to your status as being not physically qualified for duty. The NDRB reviewed your request on 23 April 2004 and denied relief with respect to an upgraded characterization for service; however, it directed a correction to your discharge record to properly include your period of continuous Honorable service from your first enlistment in the remarks. This correction was issued and has been updated into your OMPF.

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 the headaches following the removal of your brain tumor, and the resulting loss of your air traffic control rating due to medical disqualification, caused you to experience depression; which you were too proud to discuss at that time due to fear of mental health issues being seen as a weakness. You also state that smoking marijuana did not help your headaches, but instead made them worse, and that you have not since used illegal drugs. Although you indicate that you received post-discharge treatment for depression in 2006, you did not submit any supporting medical records and, instead, requested to be advised if you needed "to sign a release" for your medical records. In this regard, the Board notes that it is not an investigative body and that it is incumbent upon you to submit medical evidence in support of your contentions, if you so choose. Additionally, although the Board observed that you submitted a rating decision letter from the Department of Veterans Affairs (VA) with your request to the NDRB, the evidence you submitted to the NDRB is not retained in your service records nor was it available for the Board's consideration of your current request. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted solely of the personal statement you included with your DD Form 149 without any other additional documentation.

Because you contend that a mental health condition or traumatic brain injury (TBI) affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. While it is possible that marijuana use may be considered a

behavioral indicator of self-management of pain symptoms, it is difficult to attribute his misconduct to undiagnosed mental health concerns given pre-service problematic alcohol use behavior and misconduct prior to the surgical intervention. 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, "There is insufficient evidence from the of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to a mental health condition."

After thorough review, the Board concluded the potentially mitigating factors you submitted for consideration were insufficient to warrant relief at this time. Specifically, the Board determined that your misconduct, as evidenced by your second enlistment NJP, outweighed the mitigating factors you submitted for consideration. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved 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.

Further, the Board concurred with the AO that there is insufficient evidence that your misconduct may be attributed to a mental health condition. As explained in the AO, it is difficult to attribute your misconduct to a mental health condition based on your preservice history of 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. 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. 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,

6/5/2025

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