



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. 0422-25
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 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 2 June 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, 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)/mental health condition (MHC) (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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO). Although you were afforded an opportunity to submit a response to the AO, you chose not to do so.

During your enlistment processing, you disclosed a charge for driving on a revoked license and two prior driving under the influence (DUI) offenses. You were granted an enlistment waiver for your two prior DUI offense and enlisted in the Navy; commencing a period of active duty on 24 April 1989. On 25 April 1989, you were formally briefed on the Navy's drug and alcohol abuse policy. On 14 April 1990, you received nonjudicial punishment (NJP) for the wrongful use of marijuana. Despite this infraction, you were retained in the Navy and advised that further violations of the Uniform Code of Military Justice (UCMJ), or civilian convictions, could result in administrative separation under Other Than Honorable (OTH) conditions.

On 16 May 1991, you were found guilty of disorderly intoxication in ██████████, Florida, and sentenced to time served with a fine of \$50.00 plus court costs. You subsequently received additional NJPs, on 2 August 1991 and 6 April 1993, for multiple periods of unauthorized absence (UA) and dereliction of duty. On 2 October 1991, you were also convicted by civil authorities of Driving While Intoxicated (DWI), fined \$700.00, sentenced to six months probation, ordered to perform 50 hours of community service, required to attend DUI school, and had your license revoked for six months.

Between the noted infractions and your final NJP, you were diagnosed with an alcohol use disorder and other mental health conditions during in-patient treatment at the ██████████ ██████████. Consequently, you were notified that an administrative separation was being initiated for pattern of misconduct, commission of a serious offense, and drug abuse; at which time you elected your right to consult with counsel and waived your right to present your case before an administrative discharge board. Ultimately, the separation authority (SA) directed you be discharged with an Other Than Honorable (OTH) characterization of service for pattern of misconduct and you were so discharged on 19 April 1993.

The Board carefully considered all potentially mitigating factors to determine whether the interest 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 upgrade your discharge and your contentions that: (1) you have already been granted a favorable character of discharge determination from the Department of Veterans Affairs (VA), (2) your Navy record reflects multiple concerns related to anxiety and insomnia, for which you received inadequate treatment during your service, (3) you began self-medicating with alcohol, (4) your alcohol use and abuse significantly contributed to the circumstances leading to your discharge, and (5) you firmly believe that, had you received appropriate mental health care while in service, the outcome of your military career would have been markedly different. For purposes of clemency and equity consideration, the Board considered the totality of your application; which included your DD Form 149 and the evidence you provided in support of it.

Based on your assertions that you incurred mental health concerns during military service, which have contributed to the circumstances of your separation, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO on 16 April 2025. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated on multiple occasions. In-service, he was diagnosed with an alcohol use disorder and other mental health concerns. Although it is possible that mental health concerns incurred during military service may have contributed to his misconduct, it is difficult to attribute his misconduct solely to mental health concerns such as anxiety and phobia, particularly given pre-service problematic alcohol use that continued in service.

The AO concluded, “There is in-service evidence of mental health concerns that may be attributed to military service. There is insufficient evidence to attribute his misconduct solely to a mental health concern, other than alcohol use disorder.”

After a thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJPs and civilian convictions, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that 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. The Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. The Board also concluded that your conduct showed a complete disregard for military authority and regulations. 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. Finally, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct solely to a mental health concern, other than alcohol use disorder. As explained in the AO, it is difficult to explain your misconduct solely to mental health concerns given pre-service problematic alcohol use that continued in service. 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.

Finally, the Board noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations, disability ratings, and/or discharge classifications are not binding on the Department of the Navy and have no bearing on previous active duty service discharge characterizations. As a result, the Board concluded your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service.

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 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,

6/23/2025

