



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. 0793-25
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 14 July 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 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 Marine Corps after receiving waivers for pre-service drug use and civilian offenses of driving while intoxicated (DWI) and marijuana possession and commenced active duty on 28 January 1986.

On 22 May 1986, a medical board was convened after you were injured during a boxing match on 12 April 1986. You were found competent and recovering well. You were recommended for convalescent leave and eight months of limited duty and expected to return to full duty without restriction upon expiration of your limited duty. On 17 February 1987, you were cleared for full duty.

On 16 October 1987, you received non-judicial punishment (NJP) for two specifications of violating written orders regarding operation of government vehicles and dereliction of duty for failing to secure your M16 rifle. On 25 January 1989, you received NJP for wrongful use of cocaine. On 9 March 1989, you received another NJP for wrongful use of cocaine. On 8 April 1989, you were evaluated by a medical officer and determined to be dependent on cocaine with no potential for further service.

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 and you requested an administrative discharge board (ADB). On 8 June 1989, the ADB found that you had committed misconduct and recommended that you be discharged under OTH conditions by reason of misconduct due to drug abuse. The separation authority concurred with the ADB recommendation and you were so discharged on 18 October 1989.

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 you suffered a traumatic brain injury (TBI) while in service and the prescription drugs you were given impacted your decision making because you had never taken more than an aspirin in your life. 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.

As part of the Board's review process, qualified mental health professionals reviewed your contentions and the available records and issued an AO on 5 June 2025. The AO stated in pertinent part:

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

Petitioner received parietal craniotomy for subdural hematoma in April 1986.

May 1986 medical record summarizes the injury and treatment as follows:

“[Petitioner] was involved in a boxing match at ■ on 12 Apr 86. He sustained a blow to the right side of the head without loss of consciousness. He was admitted to Naval Hospital, ■ on 12 Apr 86, with a diagnosis of right parietal subdural hematoma and was transferred to ■ Medical Center on 16 Apr for surgery. A right parietal craniotomy was performed at ■ and the subdural

hematoma was evacuated...He returned from convalescent leave on 19 May 86 in good condition..."

"The patient was examined at Naval Hospital, ■ on 22 May 86. The examination was within normal limits with the following exceptions. There was a slight frontal parietal scalp incision which was healing well."

"The patient has made an excellent recovery from his severe head injury but it is felt that he is not ready for full duty at this time. It is therefore recommended that he be place on an eight month limited duty board."

In September 1986, medical note reads, "[Petitioner] states his Phenobarbital is too strong. Pt on P.B. [Phenobarbital] since 18 April 86 for a subdural hematoma." Author noted normal neurological exam with a consult to Neurosurgery.

October 1986 medical note indicates, "Doing well. No headaches at present. Pt stopped ■ [Phenobarbital] on his own; he states ■ was making him quick tempered and lethargic." Impression was noted as "good recovery."

November 1986 medical note indicates "Head CT of 25 Oct 86 reveals no residual SDH [subdural hematoma]." Neuropsychological testing was ordered.

December 1986 ER medical note reads, "[Petitioner] complaining of headaches since participating in boxing match...Onset of nausea and vomiting earlier today; Now complaining of...pain to top of head."

In February 1987, medical note indicates neuropsychological testing was conducted rendering the Petitioner fit for full duty. Note indicates history of head injury with "acute right subdural hematoma," and "good recovery."

There is evidence that the Petitioner sustained a TBI resulting in a subdural hematoma requiring surgery and evacuation thereof. November 1986 CT scan revealed no residual evidence of prior hematoma. February 1987 medical note indicates full recovery with no residual symptoms. Eight months after deemed fully recovered from his TBI, he began to engage in misconduct. Thus, it is unlikely that his prior TBI contributed to his misconduct as he had been medically cleared eight months prior. Furthermore, repetitive use of cocaine cannot be said to have been caused by any residual symptoms of TBI. He did not submit any medical evidence in support of his claim.

The AO concluded, "it is my clinical opinion that there is sufficient evidence of a TBI that existed in service. There is insufficient evidence to attribute his misconduct to his TBI."

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 also considered the likely negative impact your repeated misconduct had on the good order and discipline of your command.

Additionally, the Board concurred with the AO and determined that while there is sufficient evidence of a TBI that existed in service, there is insufficient evidence to attribute your misconduct to TBI. As indicated in the AO, it is unlikely that your prior TBI contributed to your misconduct as you had been medically cleared eight months prior and repetitive use of cocaine cannot be said to have been caused by any residual symptoms of TBI. Therefore, the Board was not persuaded by your argument that you were influenced by the prescribed medication you were taking. Finally, the Board noted you provided no evidence, other than your personal statement, to substantiate your contentions.

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 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,

7/29/2025

