



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

██████████
Docket No. 1033-25
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 25 August 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 Navy and commenced active duty on 24 August 2010. On 7 December 2009, during your enlistment processing, you signed the Navy Drug and Alcohol Abuse Statement of Understanding, which included explanation of the Navy's "Zero Tolerance" policy toward drug abuse in place at that time. An entry in your medical record indicates you tested positive via

urinalysis for Ecstasy on 30 September 2011. The 25 January 2012 entry documents your preservice history of alcohol and tobacco use¹.

Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), it appears that you submitted a voluntary written request for an Other Than Honorable (OTH) discharge for separation in lieu of trial by court-martial. In the absence of evidence to the contrary, it is presumed that prior to submitting this voluntary discharge request, you would have conferred with a qualified military lawyer, been advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you would have acknowledged that your characterization of service upon discharge would be an OTH.

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. Based on the information contained on DD Form 214, you were separated, on 24 February 2012, with an "Under Other Than Honorable Conditions" characterization of service, narrative reason for separation of "In Lieu of Trial by Courts-Martial," reentry code of "RE-4," and separation code of "KFS," which corresponds to "In Lieu of Trial by Court Martial."

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 upgrade your characterization of service to Honorable, and your contentions that your discharge should be changed because you would not have knowingly ingested a drug at a concert; you do not drink, smoke, or do drugs; the drugs were given to him without your knowledge; and as a result of this occurrence, you have been suffering from depression. You further contend you are requesting relief so you can apply for disability and be granted the benefits related to illnesses and injuries that may result from your service. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application, including your letter to the Board and three advocacy letters.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO on 10 June 2025. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated on multiple occasions. His adjustment disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed by the mental health clinicians. An adjustment disorder generally indicates a transitory mental health concern that typically resolves once the stressor,

¹ The medical record documents that you commenced drinking alcohol at age 18 and it involved consuming six or seven beers at a time every two months. The medical record also documents you smoked 10 cigarettes a day for approximately two years.

such as military service, is removed. Temporally remote to his military service, he has received a diagnosis of another mental health condition. It is possible that symptoms that were characterized as adjustment difficulties in service have been reconceptualized as depression symptoms after the passage of time and with increased understanding of the Petitioner's mental health. Unfortunately, it is difficult to attribute his misconduct to a mental health condition, given his denial of having engaged in the behavior.

The AO concluded, "There is in-service evidence of mental health concerns experienced during military service. There is insufficient evidence that his misconduct may be attributed to mental health concerns."

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 drug abuse, outweighed these mitigating factors. 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. Additionally, the Board concurred with the AO and determined that, although there is in-service evidence that you experienced mental health concerns in service, there is insufficient evidence to attribute your use of Ecstasy to those mental health issues. Further, the Board agreed that it is difficult to attribute your misconduct to a mental health condition given your contention of innocent ingestion. 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.

Further, the Board was not persuaded by your argument of innocent ingestion. The Board determined you provided insufficient evidence to overcome the presumption of regularity with your positive urinalysis². Finally, absent a material error or injustice, the Board declined to summarily upgrade your discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities.

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.

² While not dispositive in their finding that the presumption of regularity applies with your positive urinalysis, the Board noted that your argument in support of your innocent ingestion contention was that you do not "drink, smoke, or do drugs." The Board found the 25 January 2012 medical record directly contradicts your denial of using the first two substances.

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,

9/2/2025

