



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

██████████
Docket No. 1455-25
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 5 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 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). In addition, the Board considered an advisory opinion (AO) from a qualified mental health professional, your response to the AO, and the revised AO that was favorable to you.

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 U.S. Navy and entered active duty on 19 June 2000. On 10 January 2002, you began a period of unauthorized absence (UA) that ended with your surrender on 28 January 2002. Upon your return, you received non-judicial punishment (NJP) for your UA, failure to go

to your appointed place of duty, and failure to obey a lawful order. Subsequently you were issued a counseling warning and advised that further deficiencies in your performance or conduct may result in disciplinary action and in processing for administrative separation. On 14 February 2002, you received your second NJP for two instances of wrongful use of marijuana. You subsequently refused to participate in the offered screening for treatment. Consequently, you were notified of administrative separation processing for misconduct due to pattern of misconduct, commission of a serious offense, and drug abuse. After you waived your rights, the Commanding Officer (CO) made his recommendation to the Separation Authority (SA) that you be discharged with an Other Than Honorable (OTH) characterization. The SA accepted the recommendation and directed your discharge for the primary reason of drug abuse. You were so discharged on 22 May 2002.

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 for a discharge upgrade and contentions that you suffered from depression and were placed on anti-depressant when you transferred to █ your injuries and mental health affected your work ability, and it also affected your personal life. 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.

As part of the Board review process, a licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO on 13 May 2025. The Ph.D. stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. 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 Ph.D. concluded, "There is insufficient evidence of a diagnosis of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition."

In response to the AO, you provided a personal statement and medical documentation for consideration. After reviewing your rebuttal evidence, original Advisory Opinion was revised as follows:

I have reviewed Petitioner's additional documents. The Petitioner has presented in-service medical evidence of depression associated with stress and a diagnosis personality disorder. Unfortunately, documentation is limited. A personality

disorder diagnosis indicates lifelong characterological traits unsuitable for military service, since they are not typically amenable to treatment within the operational requirements of Naval Service. However, it is possible that the Petitioner may have also been experiencing another mental health condition, such as depression, due to military stressors. It is possible that some of his misconduct, such as marijuana use, may be considered a behavioral indicator of mental health concerns such as depression, particularly given the absence of reported pre-service substance use.

The Ph.D. revised the AO to read, “There is in-service evidence of mental health concerns. There is some post-service evidence from the Petitioner that his misconduct may be attributed to a mental health condition.”

After thorough review, the Board concluded these 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 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. The Board also found 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. 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. Furthermore, the Board noted you failed to obey a lawful order to provide a urinalysis sample that eventually tested positive for marijuana; which indicated to the Board you were aware of your misconduct by not obeying the order.

Additionally, notwithstanding the revised AO that determined there is some post-service evidence that your misconduct may be attributed to a mental health condition, the Board determined it was insufficient to mitigate your misconduct. The Board took into consideration relative brevity of your active duty service and the fact three of your incidents of misconduct were drug related¹. Even if the Board agreed that your misconduct was somehow attributable to a 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, regarding your post-discharge character evidence and advocacy letters, the Board again determined the evidence was insufficient to mitigate your misconduct. While the Board commends you on your rehabilitation efforts and good character, when weighing it against the severity of your misconduct, it determined it was insufficient to support a grant of clemency in your case.

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

¹ Two positive urinalysis and refusal to provide a urine sample.

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 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,

8/14/2025

