



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

701 S. COURTHOUSE RD

ARLINGTON, VA 22204

[REDACTED] Docket No. 2569-25

Ref: Signature Date

[REDACTED]
[REDACTED]
[REDACTED]

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 26 September 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.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Navy with a history of an arrest for criminal mischief and a waiver for pre-service marijuana use, and you began a period of active duty on 15 January 1980. Although you received nonjudicial punishment (NJP) during that period for in-service marijuana, you were allowed to reenlist and begin a second period of active duty on 4 January 1984. From September 1984 through April 1986, you incurred three NJPs for offenses of unauthorized absence (UA)

and missing movement, in violation of Articles 86 and 87, respectively, of the Uniform Code of Military Justice (UCMJ). On 10 December 1986, a message from the Naval Drug Laboratory reported your drug screening urinalysis as positive for marijuana metabolites. A subsequent substance abuse evaluation revealed that you were psychologically dependent on marijuana and had been routinely using it approximately one to three times per week. You received a fourth NJP, on 23 January 1987, for violation of Article 112a of the UCMJ due to wrongful use of a controlled substance and were notified of processing for administrative separation by reason of misconduct due to drug abuse and due to commission of a serious offense. You elected to voluntarily waive your right to a hearing before an administrative separation board and the recommendation for your discharge under Other Than Honorable (OTH) conditions was approved for the primary basis of misconduct due to drug abuse. You were so discharged on 11 March 1987.

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 requests to upgrade your discharge, change your narrative reason for separation to "disability," confirm your decorations and awards, and "review and restore" your medical records. You contend that:

- your post-traumatic stress disorder (PTSD) began aboard ship when you were thrown overboard and almost drowned while the ship was casting off a pier;
- your lieutenant blamed you for this incident and took you to mast while you were still dripping wet;
- the incident occurred because a saboteur messed with the lines "for a laugh;"
- your lieutenant hated you for having superior military awards and decorations compared to his;
- the crew assumed you were homosexual, which caused other homosexuals to target you, trying to get sex;
- your decision to strike for hospital corpsman contributed, in part, to the perception that you were homosexual, which caused you to decide not to pursue a medical career;
- when you returned to the decks, the crew physically assaulted you because they believed you were homosexual, which resulted in them "breaking your face;"
- you suffered a heart attack while aboard ship, for which you should have received a disability discharge;
- your executive officer (XO) complained that your medical condition was "messing with his competitive cycle;"
- you sought justice for your injuries, your heart attack, and the incident which caused you to be thrown overboard, but the XO purged your medical records;

- the beatings and being stuck under the ship caused you to have nightmares;
- although you had not smoked marijuana for 6 years, it alleviated your mental health symptoms;
- your documented decorations and awards are a “total confusion;”
- your evaluations were written by officers who did not know you and based their assessment of your performance on rumor regarding your sexuality; and
- you also outlined several concerns regarding your military awards and decorations.

In support of your mental health and medical contentions, you submitted rehabilitation treatment records. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted of your DD Form 149 and the evidence you provided in support of your application.

Because you contend that post-traumatic stress disorder (PTSD) or another mental health condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

During military service, the Petitioner was evaluated and diagnosed with an alcohol use disorder. There is no evidence that he was diagnosed with PTSD or another mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of another diagnosable mental health condition. He has provided no medical evidence to support his claims of PTSD, only additional medical evidence to support his in-service diagnosis of an alcohol use disorder. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given pre-service substance use that appears to have continued in service. 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 of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD.”

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 during your second enlistment period, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included 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 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. The Board noted that you were admitted under a waiver for a pre-service history of marijuana use, that you continued, admittedly, to use marijuana regularly during your second period of enlistment. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor.

Additionally, the Board concurred with the clinical opinion of the AO that there is insufficient evidence that you experienced PTSD during your military service such that it might have contributed to or mitigated your drug abuse misconduct. The Board applied liberal consideration to your claim that you suffered from a mental health condition, and to the effect that this condition may have had upon the conduct for which you were discharged in accordance with the Hagel and Kurta Memos. Applying such liberal consideration, the Board found insufficient evidence of a diagnosis of mental health condition that may be attributed to military service. This conclusion is supported by the fact you provided no evidence in support of your claim. Additionally, even applying liberal consideration, the Board found insufficient evidence to conclude that the misconduct for which you were discharged was excused or mitigated by your mental health condition. In this regard, the Board simply had insufficient information available upon which to make such a conclusion. 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.

In regard to your request for a disability discharge, the Board observed that both your medical and dental record folders, which are contained in your official military personnel file (OMPF) are devoid of clinical records. The Board acknowledged this discrepancy but found insufficient evidence to support your allegation that your records were intentionally removed or destroyed, whether by your XO or any other member of the naval service. Further, you submitted no substantiating evidence with respect to the alleged loss of your health records or in support of treatment you might have received. Absent any in-service medical evidence to consider, and further noting that your discharge for misconduct would have superseded any medical grounds regardless, the Board found insufficient evidence to support a medical disability basis for your discharge. Finally, the Board has no authority to create or "restore" missing medical records.

With respect to your concerns regarding your awards and decorations, the Board applied a presumption of regularity to the maintenance of your record, absent evidence to the contrary. Regarding your "missing National Defense" medal (NDSM), the Board found insufficient evidence that you served during a period for which the NDSM was awarded. Regarding your documented awards, the Board determined that your second award of the Navy Expeditionary Medal, second award of the Navy "E" ribbon, and Meritorious Unit Commendation were entered into your discharge record based on your service history during your second period of enlistment notwithstanding that your awards from your first period of service appear to have been entered separately after those awarded during your second period of service. Therefore, the Board found insufficient evidence of material error regarding your issued awards and decorations notwithstanding the administrative formatting error.

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.

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,

11/19/2025

[REDACTED]
Executive Director
Signed by: [REDACTED]