



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

██████████
Docket No. 2689-25
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 7 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 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional and your response to the AO.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 began a period of active duty on 2 September 1980. On 5 June 1982, you received nonjudicial punishment (NJP) for two instances of wrongful possession of a controlled substance-marijuana. On 30 June 1982, you were counseled concerning frequent

involvement with drugs and alcohol abuse. You were advised that failure to take corrective action could result in administrative separation. On 15 July 1982, your commanding officer (CO) requested that you were evaluated by a CAAC counselor as a result of drug and alcohol abuse. On 12 January 1984, you received a second NJP for drunk on duty, intent to defraud, and failure to fulfill oral promises. Consequently, you were counseled concerning frequent involvement and advised that failure to take corrective action could result in administrative separation.

On 12 March 1984, you received a third NJP for a period of unauthorized absence (UA) from appointed place of duty and incapacitated for duty. Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse and misconduct due to pattern of misconduct. You requested to consult with counsel and elected a hearing by an Administrative Discharge Board (ADB). On May 1984, the ADB voted (3) to (0) that you committed misconduct due to drug abuse and misconduct due to pattern of misconduct, and recommended that you be discharged with an Other Than Honorable (OTH) discharge characterization of service. Your commanding officer concurred with the ADB recommendation.

On 8 June 1984, you were evaluated by a medical officer as a result of being hit in the head with a toolbox while climbing a ladder. Consequently, you were diagnosed with trauma to the head, with normal neurological checks. On 22 June 1984, a CAAC counselor determined that you were not dependent on drugs and alcohol and that you should be held strictly accountable for your actions. On 11 July 1984, the separation authority approved the ADB recommendation and ordered your discharge by reason of misconduct due to pattern of misconduct. You were so discharged on 6 August 1984.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for relief. The NDRB denied your request, on 29 April 1996, after determining your discharge was proper as issued.

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: (a) due to multiple TBIs, there were behavioral changes and chronic pain issues which led to unsatisfactory service and an OTH discharge, (b) the TBIs were not your fault and you were not administered proper treatment and care, and (c) post discharge, you sought medical care and were unable to receive Department of Veterans Affairs healthcare due to your discharge status. 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's review, the Board considered the AO. The AO stated in pertinent part:

In his previous request for review of his record, he denied engaging in misconduct. He claimed that his first NJP was erroneous, as he did not use the marijuana which belonged to his roommate. He claimed that he was not drunk on duty but was punished for having attended a party the evening before when he had not been informed of changes to the watch bill that made him the duty driver. He claimed

that the letters of indebtedness were due to his restriction following NJPs and the transfer of a roommate. He denied substance use and negative urinalyses results.

Petitioner was appropriately referred for psychological evaluation and properly evaluated on multiple occasions during his enlistment. He was found to be psychologically fit for service and denied symptoms of a mental health condition. He received no formal mental health diagnosis in service. However, there is in-service behavioral evidence of a possible substance use disorder. Temporally remote to his military service, he has been granted service connection for TBI. There is no medical evidence of a mental health diagnosis, and the Petitioner has provided none. There is insufficient evidence to attribute his misconduct to TBI or a mental health condition. His purported TBI occurred shortly before his separation from service and after his alleged misconduct, which he denies having committed.

The AO concluded, “There is post-service evidence from the VA of TBI. There is some in-service evidence of a possible substance use disorder. There is insufficient evidence that his misconduct may be attributed to TBI or a mental health condition, other than a possible substance use disorder.”

In response to the AO, you provided additional documentation in support of your application.

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 related 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 is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Further, the Board 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.

Additionally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to TBI or a mental health condition. As explained in the AO, you provided medical evidence that is temporally remote to your service. Further, you provided no evidence of a mental health diagnosis. 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, absent a material error or injustice, the Board declined to summarily upgrade a 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.

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 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,

7/23/2025

