



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

██████████
Docket No. 3019-25
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 8 September 2025. The names and votes of the panel members will be furnished upon request. Your allegations of error or 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO). 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 their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case on the evidence of record.

During your enlistment processing you disclosed pre-service marijuana use and a dismissed domestic violence charge. Following a screening interview with favorable results, you enlisted in the Navy and began a period of active duty on 5 May 1998. On 23 July 1999, you received non-judicial punishment (NJP) for failure to go to your appointed place of duty. On

19 November 1999, you were formally counseled for failure to obey an order and for drunk and disorderly conduct. You were advised that, although you were being retained in the naval service, further deficiencies in your performance and/or conduct could result in disciplinary action and administrative separation processing. From 8 September 1999 through 24 January 2003, you received five additional NJPs for infractions that included failure to go to appointed place of duty, missing movement, failure to obey other lawful order, and larceny of \$1,100.00 property of ██████████ recreational committee. On 7 April 2003, you submitted a written request for an Other Than Honorable (OTH) discharge in order to avoid trial by court-martial for wrongful use of marijuana. Prior to submitting this request, you conferred with a qualified military defense counsel, were advised of your rights, and warned of the probable adverse consequences of such a discharge. Your request was approved, and you were discharged under OTH conditions in lieu of trial by court-martial on 8 May 2003.

The Board carefully considered all potentially mitigating factors to determine whether the interest 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 an upgrade of your discharge in order to obtain veterans' benefits and your contentions that you incurred mental health concerns during service and they may have contributed to the circumstances of your separation. 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.

Based on your assertions that you incurred mental health concerns during military service, which may have contributed to the circumstances of your separation, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO on 17 July 2025. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided extensive and compelling evidence of mental health concerns that onset following stressors and substance use after his separation from military service. Unfortunately, there is insufficient evidence to establish clinical symptoms in service or provide a nexus with his misconduct. There are also some inconsistencies in his post-service and service records that raise doubt regarding his candor or the reliability of his recall.

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

After a thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJPs and separation in lieu of trial by court-martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that 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 further found that

your misconduct 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 in-service misconduct may be attributed to a mental health condition. As explained in the AO, there is insufficient medical evidence to establish clinical symptoms in service or provide a nexus with your misconduct. 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.

Further, the Board determined that you already received a large measure of clemency when the Navy agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge. Lastly, 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 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,

9/22/2025
