



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

Docket No. 3221-25
Ref: Signature Date

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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. 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 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You previously applied to this Board for an upgrade to your characterization of service where you contended that your discharge was unjust because you suffered from bipolar disorder and anxiety that existed prior to service and those conditions impacted your in-service misconduct. You further argued that post-discharge, you have become stable on medication and completed drug rehabilitation. The Board denied your request on 25 November 2024. The summary of your service remains substantially unchanged from that addressed in the Board's previous decision.

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 change your discharge characterization of service and your contentions that you have had a mental disability since birth that caused you to make bad decisions, you have been diagnosed and completed drug treatment post-discharge, and you should be upgraded after talking to other people with the same offense. For purposes of clemency and equity consideration, the Board considered the totality of your application, which consisted of your DD Form 149, the outpatient mental health records you provided in this application, and the documentation you provided in your previous application.

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 21 July 2025. The AO stated in pertinent part:

Petitioner contends he suffered from mental health concerns throughout his life, which may have contributed to the circumstances of his separation.

Petitioner entered active duty in the US Navy in June 1998. He denied any history of pre-service mental health symptoms or treatment.

From February to April 1999, he was on unauthorized absence (UA) for three periods totaling 20 days. In June 1999, he received non-judicial punishment (NJP) for three specifications of UA from his place of duty.

In August 1999, he pled guilty at special court martial of three periods of UA and three specifications of wrongful use of a controlled substance.

In October 2001, he received a bad conduct discharge. No service mental health records were available for review.

In a previous request for review, he provided evidence of a psychiatric hospitalization in January 2013 for a diagnosis of Depressive Disorder Not Otherwise Specified.

Petitioner submitted post-service mental health records. June 2022 records describe a psychiatric hospitalization for diagnoses of Bipolar I Disorder, moderate, most recent episode manic; Amphetamine Use Disorder, severe; and Marijuana Use Disorder, severe. Petitioner submitted evidence of treatment from February 2016 to December 2022. Records also indicate "personal history (past history) of psychological abuse...[and] physical abuse in childhood. Client does not wish to address in treatment."

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. 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 medical evidence of mental health concerns that are temporally remote to his military service and appear unrelated. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given the denial of mental health symptoms in service.

The AO concluded, “There is insufficient evidence of a diagnosis of 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 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 non-judicial punishment and special court-martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved 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 Bad Conduct 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.

Further, 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 AO and the fact your medical evidence is temporally remote to your service. 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.

Finally, with respect to your contention that you believe your characterization of service should be upgraded based on conversations with others with similar misconduct, the Board disagreed with your contention that relief is warranted because of previous Board decisions. The Board noted that no two Board cases are comparable given the obvious factual differences inherent with each individual case. Moreover, the Board’s three-member composition is random in nature and is not comprised of the same members each day. Accordingly, while previous federal or Board

decisions may initially appear inconsistent with other adjudicated cases, such decisions actually reflect a Board's careful and thoughtful analysis of the specific facts and circumstances of each Petitioner, and do not establish binding or compelling precedent for subsequent boards whatsoever.

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 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,

9/24/2025

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Executive Director

Signed by: ■