



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD
ARLINGTON, VA 22204

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Docket No. 3572-25
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 19 December 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 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider and your AO rebuttal submission.

You enlisted in the U.S. Navy and began a period of active duty service on 22 January 2003. Your pre-enlistment physical examination, on 26 August 2002, and self-reported medical history both noted no psychiatric or neurologic issues, symptoms, history, or counseling.

On 27 June 2005, civilian authorities in █ arrested you on charges of felony possession of cocaine and possession of drug paraphernalia. The agents arresting you were working undercover at the time. The District Attorney's (DA) office ultimately dropped the charges against you and relinquished jurisdiction and control over you to the Navy for disposition.

Instead of disciplining you with either non-judicial punishment or a court-martial for your felony drug offenses, on 21 September 2005, your Navy command notified you of administrative separation proceedings by reason of misconduct due to drug abuse. You elected your rights to consult with counsel, submit statements, and to request an administrative separation board (Adsep Board).

On 21 June 2006, an Adsep Board convened in your case. At the Adsep Board, you were represented by counsel. A civilian DA testified at the Adsep Board and stated that his office dismissed the felony drug possession charge against you only because they believed the Navy would retain and discipline you. The DA also stated his office would have pursued the criminal charges had the Navy not agreed to keep you. Following the presentation of evidence and any witness testimony, the Adsep Board members unanimously that you committed misconduct and should be separated with a General (Under Honorable Conditions) (“GEN”) characterization of service.

Ultimately, on 5 July 2006, you were discharged from the Navy for misconduct due to drug abuse with a GEN characterization of service and assigned an RE-4 reentry code.

On 28 April 2011, the Naval Discharge Review Board (NDRB) denied your initial discharge upgrade application. You did not proffer any mental health contentions with your NDRB application.

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 change to your reason for separation. You contend that: (a) you are relying on Section 504 of the Rehabilitation Act of 1973, which states that no individual with a disability shall be denied the benefits of any program or activity receiving federal financial assistance on the basis of that disability, and (b) you also rely on Manker v. Spencer and Kennedy v. Esper, along with the Hagel and Kurta Memos, which allow service members to request discharge upgrades by submitting evidence that any alleged misconduct during military service was related to a mental health condition. 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.

A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records and issued an AO on 29 July 2025. As part of the Board’s review, the Board considered the AO. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. While the Petitioner has provided evidence of some mental health symptoms that may have been present during military service, there is insufficient evidence to attribute his mental health symptoms solely to military service, given pre-service problematic alcohol use that continued in service. Unfortunately, available records are not sufficiently detailed to provide a nexus with his

misconduct, particularly as it is difficult to attribute holding drugs and paraphernalia for a friend to a mental health condition.

The Ph.D. concluded, “it is my considered clinical opinion that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition.”

In response to the AO, you provided additional evidence in support of your application. Following a review of your AO rebuttal submission, the Ph.D. did not change or otherwise modify their original AO.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your misconduct and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your drug-related misconduct was not due to any mental health-related conditions or symptoms. Moreover, even if the Board assumed that your misconduct was somehow attributable to PTSD or any other mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also 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.

The Board also noted that you have now proffered two vastly different factual accounts of certain contentions and arguments supporting your requests for discharge upgrade relief. Your April 2011 NDRB application made no mention of any mental health concerns or PTSD, and instead focused on basic clemency-related considerations. The Board determined that your morphing and/or changing narrative in your current petition cannot be factually reconciled with your previous NDRB contentions, or with information from your service record. As a result, the Board determined that you did not provide convincing evidence to substantiate your service-connected, mental health-related contentions.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that illegal drug possession and/or use is contrary to Navy core values and policy, renders such service members unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. The Board also noted that, although one’s service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. The Board determined that characterization

under GEN or under Other Than Honorable conditions (OTH) 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.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard, the Board concluded that your misconduct and disregard for good order in 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,

1/8/2026

