



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

701 S. COURTHOUSE RD

ARLINGTON, VA 22204

[REDACTED] Docket No. 3724-25

Ref: Signature Date

[REDACTED]

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 29 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 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) 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 enlisted in the Navy and commenced active duty on 18 July 2000. Between 25 December 2001 and 28 March 2002, you commenced seven separate periods of unauthorized absence (UA) totaling 63 days. During that time, your command received notification that you had tested positive for Tetrahydrocannabinol (THC) on four separate urinalyses.

Consequently, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to drug abuse. You waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board. On 1 May 2002, you pleaded guilty at Summary Court Martial

(SCM) to seven counts of UA and four specifications of wrongful use of marijuana. You were sentenced to reduction in rank to E-1, forfeitures, and restriction.

On 6 May 2002, you commenced a period of UA that ended on 28 October 2002. While you were UA, on 17 May 2002, your commanding officer recommended to the separation authority (SA) that you be discharged with an OTH. The SA approved the recommendation on 29 August 2002¹.

Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), it appears that you submitted a voluntary written request for an Other Than Honorable (OTH) discharge for separation in lieu of trial (SILT) by court-martial. In the absence of evidence to contrary, it is presumed that prior to submitting this voluntary discharge request, you would have conferred with a qualified military lawyer, been advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you would have acknowledged that your characterization of service upon discharge would be an OTH.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on the information contained on your DD Form 214, you were separated, on 26 November 2002, with an "Under Other Than Honorable Conditions (OTH)" characterization of service, narrative reason for separation is "In Lieu of Trial by Court Martial," reentry code is "RE-4," and your separation code of "KFS;" which corresponds to in lieu of trial by court martial².

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 10 August 2009, based on their determination that your discharge was proper as issued³.

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 service-connected PTSD mitigated your misconduct. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted of your DD Form 149, your statement, medical

¹ It appears you were erroneously issued a Certificate of Release or Discharge from Active Duty (DD Form 214) indicating you were released from active duty, in absentia, on 30 October 2002. Your history of assignments also annotates that you were discharged on 30 October 2002. This is despite the fact records, one of which you signed, indicate you returned from UA on 28 October 2002 and remained on active duty through 26 November 2002.

² Your record also contains administrative remarks from 26 November 2002 in which you acknowledged you were not eligible for reenlistment and would be assigned an RE-4 code. The administrative remarks also document that you were separated from the Navy on 26 November 2002 vice 30 October 2002.

³ The NDRB's review appears to be incomplete and based on the erroneous DD Form 214 contained in your record. The NDRB review does not address the more recent DD Form 214 and the administrative remarks in your record which indicate the Navy's initial approval of your administrative separation was apparently superseded by your SILT request and discharge on 26 November 2002.

records, and the correspondence from the [REDACTED] that you provided.

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 4 August 2025. The AO stated in pertinent part:

Petitioner contends he suffered from mental health conditions (PTSD) during military service, which may have contributed to the circumstances of his separation from service.

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service. He submitted post-service evidence of a variety of diagnoses. In one document, it reads: “[Petitioner] meets criteria for Major Depression and meets some criteria for PTSD. It is not clear that the trauma he experienced during military duty meets the diagnostic criteria for PTSD for DSM V. None the less [sic] his severe Depressive symptoms appear to have started during active duty and have become chronic and recurrent since then.” (February 2018). Although it is possible that he suffered from depressive symptoms while in service, the extent of his unauthorized absences exceeds that which would be expected to be caused by depression alone, in the absence of additional evidence. Unfortunately, neither his personal statement nor evidence submitted are sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct.

The AO concluded, “it is my clinical opinion that there is sufficient evidence of a variety of mental health conditions that were diagnosed post-service. There is insufficient evidence to attribute his misconduct 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 SCM 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 it involved multiple 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 considered the likely negative impact your repeated misconduct and extended UA had on the good order and discipline of your command. Further, the Board also noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and possible punitive discharge.

Additionally, the Board concurred with the AO and determined that while there is sufficient evidence of a variety of mental health conditions that were diagnosed post-service, there is insufficient evidence to attribute your misconduct to a mental health condition. 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 sufficient evidence of a diagnosis of mental health condition that may be attributed to military service. This conclusion is supported by the AO. However, 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 and agreed with the AO that your personal statement and the evidence submitted are not sufficiently detailed to 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.

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,

12/8/2025

