



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

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Docket No. 4186-25
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 your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 25 March 2026. 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), as well as the 4 April 2024 guidance from the Under Secretary of Defense for Personnel and Readiness relating to the consideration of cases involving both liberal consideration discharge relief and fitness determinations (Vazirani Memo) (collectively the "Clarifying Guidance"). The Board also considered a 6 February 2026 advisory opinion (AO) from a board-certified psychiatrist. Although you were provided an opportunity to respond to the AO, you chose not to do so.

A review of your record shows that you enlisted in the Navy and commenced active duty on 25 September 2019. According the AO, during your service, you were placed into the Integrated Disability Evaluation System (IDES) due to conversion disorder, which is a collection of cognitive and physical symptoms (seemingly neurological in nature) with no clear structural or pathological origin. You were reviewed by a Medical Evaluation Board (MEB) at ██████████ ██████████ which issued a report on 23 June 2021. The MEB evaluated your conditions of Conversion Disorder (Functional Neurological Symptom Disorder with Mixed Symptoms, Persistent, Without Psychological Trigger and Other Specified Depressive Disorder and

recommended referral of your case to the Physical Evaluation Board (PEB) for adjudication of fitness for continued military service.

In the meantime, on 30 November 2021, you received nonjudicial punishment (NJP) for wrongful use of a controlled substance (cocaine) as a result of a positive urinalysis. Consequently, on 1 December 2021, you were informed of the initiation of administrative separation processing and your rights in connection therewith based on misconduct – drug abuse. On 13 December 2021, you submitted an appeal of your NJP. On 14 December 2021, your command endorsed your NJP appeal as follows:

a. Rebuttal. My decision to impose non-judicial punishment on [Petitioner] was based on the evidence presented. I believe the positive result, along with the Defense Forensic Science Center report, show that Seaman Apprentice did, in fact, commit the offense. Consequently, his punishment was not disproportionate.

b. Work Performance. [Petitioner's] chain of command spoke very highly of him in both written supervisor statements and in verbal statements at NJP despite being in a Limited Duty status. However, using a controlled substance, even on liberty, is a direct violation of the UCMJ and goes against the Navy Core Values. The Department of Defense and Department of the Navy have zero tolerance policies when it comes to drugs that every Sailor is expected to abide by.

Pursuant to the above, the punishment awarded was fair, just, and proportionate to the offense. Accordingly, I recommend that this appeal be denied.

On 21 February 2022, an Informal PEB found you to be unfit due to Conversion Disorder with Mixed Symptom Presentation (Unstable) with a 50% disability rating recommended that you be placed on the temporary disability retired list (TDRL). On 25 February 2022, you executed your election of options (EOO), in which you accepted the findings of the IPEB and did not request a Formal PEB. On 18 December 2023, Chief of Naval Personnel sent a message stating that he determined that you should be separated for misconduct despite your medical condition. On 19 January 2024, you were discharged for your drug abuse and assigned a General (Under Honorable Conditions) characterization of service.

In your application, you requested to have your discharge characterization upgraded to Honorable and that your record be corrected to reflect a service-connected disability retirement. In support of your request, you contended that the PEB finding in your case should have taken precedence over your misconduct-based administrative separation. You further argued that you suffered from cognitive impairment from Traumatic Brain Injury (TBI) at the time of your drug use misconduct, and that you never “knowingly or intentionally” consumed cocaine. In further support of your request, you provided a legal brief, a variety of service record documents, a written declaration, several character statements, as well as a 14 June 2024 finding by the Department of Veterans Affairs (VA) granting you a variety of service connected conditions.

In order to assist it in reviewing your application, the Board obtained the 6 February 2026 AO from a board-certified psychiatrist. The AO was considered unfavorable to your request.

According to the AO, if a service member is undergoing processing in the IDES, the separation authority may direct separation regardless of the IDES process status or outcome if the separation authority determines the service member should be separated for misconduct, despite the medical condition. The AO concluded, “in my medical opinion, the preponderance of objective clinical evidence provides insufficient support for Petitioner’s contention that his unfitting medical condition was not properly considered during his disciplinary and administrative processing, or that his medical condition was of such severity as to mitigate his in-service misconduct.”

The Board carefully reviewed your petition and all of the materials that you provided with your petition, and disagreed with your rationale for relief. In its review of your petition, the Board considered the application of liberal consideration as set forth in the Clarifying Guidance and in particular, the Vazirani Memo. According to the Vazirani Memo, under circumstances where a petitioner seeks both discharge relief as well as a service disability retirement based on the assertion that they were medically unfit to serve, the Board first applies liberal consideration to the assertion that PTSD or MST potentially contributed to the circumstances resulting in discharge to determine whether any discharge relief is appropriate. After making that determination, the Board then separately assesses your claim of medical unfitness for continued service due to PTSD or MST as a discreet issue, without applying liberal consideration to the unfitness claim or carryover of any of the findings made when applying liberal consideration.

In its review of your petition as well as your entire service, record, the Board considered that you had been found to have a condition while in service, and, post-service, the VA diagnosed you with Residuals of TBI, Chronic Adjustment Disorder, and Migraine Headaches. Thus, in its analysis of whether discharge relief was appropriate in your case, the Board fully considered these conditions and provided liberal and special consideration.

The Board initially concluded you were appropriately processed for administrative separation based on your record of misconduct. Despite your contention that you did not knowingly ingest cocaine, the Board noted you did not provide any evidence, other than your statement, to substantiate your contention. Further, the Board concurred with the AO’s explanation that misconduct based administrative separation processing can take precedence over disability based processing. Therefore, the Board determined the presumption of regularity applies to your administrative separation and no error exists with your record.

However, because you also raised the issue of TBI and a mental health issue, the Board also considered the effect that these conditions may have had upon the conduct for which you were discharged in accordance with the Kurta Memo. Applying such liberal and special consideration, the Board found sufficient evidence of a diagnosis of TBI and a mental health issue that may be attributed to military service. This conclusion is supported by the medical evidence you provided in support of your claim. 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 TBI or mental health condition. In this regard, the Board simply had insufficient information available upon which to make such a conclusion since you deny committing drug abuse.

In addition to applying liberal consideration to your claim that you suffered from TBI and a mental health condition, and to the effect that these conditions may have had upon the conduct for which you were discharged in accordance with the Hagel and Kurta Memos, the Board also considered the totality of the circumstances to determine whether equitable relief was warranted in the interests of justice. In this regard, the Board considered, amongst other factors, your desire for an upgrade to your characterization of service, your contentions, the totality of your service to include service highlights, the non-violent nature of your misconduct, your relative youth and immaturity at the time of your misconduct, the negative effect your discharge has had on your life, your rehabilitation efforts, your post-service record of accomplishments, your service to your community, your health issues, the evidence you provided in support of your application, the character references you provided for review, and the passage of time since your discharge.

The Board found that the mitigating factors were not nearly sufficient to justify any equitable relief. Specifically, the Board found that the severity of your misconduct far outweighed all of the mitigating factors combined. In particular, 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 found that your conduct showed a complete disregard for military authority and regulations. Your conduct was sufficiently serious to negatively affect the good order and discipline of your command. Therefore, even taking into consideration all the mitigation factors in your case, the Board found that your misconduct while on active duty outweighed the mitigation evidence offered. Further, the Board noted that, despite having NJP imposed for use of cocaine, you were processed using notification procedure, for which the least favorable characterization of service was General (Under Honorable Conditions). In the Board's experience in reviewing discharge cases that involve misconduct due to drug abuse, you were at significant risk in being processed using administrative board procedures, which may have resulted in you receiving an Other Than Honorable characterization of service. Thus, it appeared to the Board that you already received significant clemency at your time in service. While the Board commends you for your post-service accomplishments, ultimately, the Board concluded an upgrade of your discharge characterization of service is not warranted in the interests of justice. Based on the same rationale, the Board determined your misconduct based administrative separation also remains appropriate.

In light of the fact that you were in the IDES at the time of your administrative discharge processing, the Board determined the second level of analysis under the Vazirani Memo, (whether your conditions rendered you unfit to serve) was inapplicable in your case.

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,

4/10/2026

[REDACTED]
 [REDACTED]
 [REDACTED]