



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

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Docket No. 5689-25  
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 6 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) 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. Although you were provided an opportunity to respond to the AO, you chose not to do so.

The following is the relevant factual background of your case based upon review of your naval record and/or the matters provided with your application:

1. You enlisted in the U.S. Navy and began a period of active duty service on 1 March 1976. Your enlistment physical examination, on 5 February 1976, and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms.

2. On 31 October 1978, you commenced a period of unauthorized absence (UA) that on 1 November 1978.

3. On 3 November 1978, you commenced a period of UA that terminated on 6 November 1978.

4. On 8 November 1978, you commenced a period of UA that terminated on 16 November 1978. On the same day you returned from UA, at or around 1200 hours on 16 November 1978 you commenced another period of UA that terminated on 20 December 1978. On that same day, you commenced another UA period that terminated on 22 January 1979. That same day, you commenced another UA period that terminated on 9 April 1979.

5. On 28 August 1978, you were convicted at a Summary Court-Martial (SCM) of: (a) six (6) separate UA specifications (1 day, 3 days, 8 days, 34 days, 33 days, and 108 days, respectively), (b) disrespect towards a superior commissioned officer, (c) insubordinate conduct, (d) disobeying a lawful general order (marijuana possession), and (e) willful damage/destruction of military property of the U.S. The SCM Officer sentenced you to a reduction in rank to the lowest enlisted paygrade (E-1), forfeitures of pay, and restriction. After the Convening Authority (CA) approved the SCM sentence, your command issued you a "Page 13" warning advising you that further misconduct may result not only in disciplinary action but in processing for administrative discharge.

6. On 24 September 1979, you were convicted at a second SCM of: (a) disobeying a lawful general order (using hashish), and (b) breach of the peace. The SCM Officer sentenced you to confinement at hard labor for thirty (30) days. The CA approved the SCM sentence.

7. On 30 September 1979, your command notified you of administrative separation procedures by reason of: (a) misconduct due to frequent involvement of a discreditable nature with military authorities, and (b) misconduct due to drug abuse. You elected your rights to submit statements and to present your case at a hearing before an administrative separation board (Adsep Board).

8. On 11 October 1979, an Adsep Board convened in your case. At the Adsep Board, you were represented by counsel and provided an unsworn statement on your own behalf. Following the presentation of evidence and any witness testimony, the Adsep Board members unanimously recommended that you be separated with an under Other Than Honorable conditions (OTH) discharge characterization.

9. In the interim, on 26 October 1979, you commenced a period of UA that terminated on 30 October 1979. The same day you returned, you commenced another UA period that terminated on 31 October 1979.

10. On 21 November 1979, you received NJP for UA. You did not appeal your NJP.

11. On 25 January 1980, the Separation Authority approved and directed your discharge for misconduct with an OTH characterization of service, along with an RE-4 reentry code.

12. However, on 28 January 1980, you were convicted at a third SCM of: (a) assault, and (b) wrongfully communicating a threat to injure. The SCM Officer sentenced you to confinement at hard labor for seven (7) days. The CA approved the SCM sentence.

13. Ultimately, on 12 February 1980, you were separated from the Navy for misconduct with an OTH discharge characterization and assigned an RE-4 reentry code.

After careful review, the Board reached the following conclusions and denied your application for relief.

The Board initially concluded you were appropriately processed for administrative separation based on your record of misconduct. While the Board carefully considered your contention for mitigation, the Board noted you did not deny committing the misconduct that formed the basis for your administrative separation and OTH discharge. Therefore, the Board determined the presumption of regularity applies to your administrative separation and no error exists with your record.

However, because you raised the issue of mental health, the Board also requested an AO. A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records and issued an AO on 19 September 2025. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated on a number of occasions. His anxiety diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. It is possible that anxiety may account for some of his misconduct, as brief UA and minor disobedience could be indicative of avoidance and irritability consistent with anxiety. However, it is difficult to attribute chronic and protracted UA and aggressive outbursts leading to assault to anxiety, particularly given in-service determinations that the Petitioner was fit for duty. It is difficult to attribute his substance use to a mental health condition, given his denial of having engaged in the misconduct.

The Ph.D. concluded, "it is my considered clinical opinion that there is in-service evidence of mental health concerns that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed solely to mental health concerns."

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 Kurta Memo. 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 and your in-service diagnosis. 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 recognized the same concerns raised in the AO. 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.

In addition to applying liberal consideration to your claimed mental health condition and its potential effect upon your conduct in accordance with the Kurta Memo, the Board also considered the totality of the circumstances to determine whether equitable relief is warranted in the interests of justice in accordance with the Wilkie Memo. 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, 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 mental health issues, the harshness of your punishment, your advanced age, 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. Further, the Board 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 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. The simple fact also remains is that you left the Navy while you were still contractually obligated to serve and you went into a UA status on no less than eight (8) separate occasions without any legal justification or excuse for a total of approximately 192 days. Therefore, even taking into consideration your youth and immaturity, the mental health issues you experienced, and your post-service rehabilitation, the Board found your multiple instances of UA and continuous cycle of misconduct while on active duty outweighed the mitigation evidence offered. While the Board commends you for your post-service accomplishments with your family, 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,

3/20/2026

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Executive Director

Signed by: █