



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE RD  
ARLINGTON, VA 2220

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Docket No. 5801-25  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 8 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 the 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, 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)/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 on 12 September 2025. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 2 May 2001. On 11 February 2003, you received nonjudicial punishment (NJP) for misbehavior as a sentinel and assault consummated by battery. On 7 July 2003, you began a period of unauthorized absence (UA) which lasted two days. Between 21 August 2003 and 8 December 2003, you had two periods of UA totaling 104 days. On 8 December 2003, you received a second NJP for the two periods of UA and wrongful use of a controlled substance-marijuana. Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct, commission of a serious offense, and drug abuse. You decided to waive your

procedural rights and your commanding officer recommended you be discharged with an Other Than Honorable (OTH) discharge characterization of service. The separation authority approved the recommendation by reason of misconduct due to drug abuse and you were so discharged on 18 December 2003.

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 contentions that: (a) you need medical assistance and have a daughter that needs to know her father's sacrifices, and (b) you were mentally unstable when you returned back from overseas and made immature decisions which you regretted. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted of your DD Form 149, character letters of support, and mental health records.

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. There is no evidence of a diagnosis of PTSD. The Petitioner has provided medical evidence of a diagnosis of a mental health condition that is temporally remote to his military service. Although there is some indication in the post-service civilian record indicating that the Petitioner may have been experiencing prodromal symptoms of a mental health condition in service, there is insufficient information to make this attribution, particularly given the chronic and repetitive UA. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO 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 that the Petitioner's misconduct may be attributed to PTSD or another mental health condition."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug related offense. 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 noted that marijuana use in any form is still against Department of War regulations and not permitted for recreational use while serving in the military. The Board also found that your conduct showed a complete disregard for military authority and regulations. The Board observed you were given an opportunity 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.

Additionally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD or another 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 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 and recognized the same concerns raised in the AO. 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 the 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,

1/6/2026

