



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

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Docket No. 6838-25
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 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 2 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 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, 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). The Board also considered the advisory opinion (AO) of a qualified mental health provider and your response to the AO.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

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 Navy and began a period of active duty on 27 March 2000. During your enlistment processing you disclose pre-service marijuana use and possession and were granted an enlistment waiver.

2. On 7 August 2000, you were counseled in connection with a disorderly conduct infraction. You were retained in the naval service but advised that subsequent violations of the Uniform Code of Military Justice (UCMJ) and/or conduct resulting in civilian action could result in an administrative separation under Other Than Honorable (OTH) conditions.

3. On 13 September 2000, you received nonjudicial punishment (NJP) for a 14-day period of unauthorized absence (UA) in violation of Article 86 of the UCMJ. Your punishment consisted of forfeiture of \$263.00 per month for one month and 14 days of restriction and extra duties. However, the forfeitures were suspended for six months. You were also issued additional administrative remarks documenting this misconduct and advising you that further misconduct could result in administrative separation with an OTH characterization of service.

4. On 29 July 2004, you were offered and declined level III treatment.

5. Unfortunately, the documents related to your administrative separation are not in your official military personnel file (OMPF). In this regard, 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 (as is the case at present), will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214) reveals you were separated from the Navy, on 11 August 2004, with an Other Than Honorable (OTH) characterization of service, narrative reason for separation of "In Lieu of Trial By Court Martial," separation code of "KFS," and reenlistment code of "RE-4."

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 that your urinalyses was a false positive, the Board noted you provided no evidence, other than your statement, to substantiate your contention. Additionally, the Board was not persuaded by your contentions regarding your request to be discharged in lieu of trial by court-martial after again finding no evidence to substantiate your allegations. Therefore, the Board determined the presumption of regularity applies to your administrative separation and no error exists with your record.

However, based on your assertions that you incurred mental health concerns during military service, which may have contributed to the circumstances of your separation from service, a qualified mental health professional reviewed your request for correction of your record and provided the Board with an AO on 5 December 2025. The AO stated in pertinent part:

During military service, the Petitioner was appropriately evaluated and diagnosed with an alcohol or substance use disorder. He was offered treatment, which he declined. There is no evidence that he was diagnosed with another mental health condition in military service. Temporally remote to his military service, the VA has granted service connection for a mental health condition. Unfortunately, it is difficult to attribute his misconduct to a mental health condition other than alcohol or substance use disorder, given his pre-service problematic substance behavior that appears to have continued in service, although the Petitioner denied in-service

substance use. 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 post-service evidence from the VA of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to a mental health condition other than an alcohol or substance use disorder."

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 temporally remote medical evidence from the Department of Veterans Affairs. 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, i.e. you denied committing the misconduct.

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 a upgrade to your characterization of service, your contentions, the totality of your service, your need for veterans' benefits¹, 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 mental health issues, 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. Moreover, the Board 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

¹ The Board observed in your statement you contend that you receive no benefits and are looking to get some support for your service connected disability conditions. However, the evidence you submitted indicates you were deemed eligible for Department of Veterans Affairs compensation and pension benefits, which would also include medical treatment for all service connected disability conditions.

court-martial conviction and possible punitive discharge. Therefore, even taking into all the mitigation factors that exist with your case, the Board found your multiple incidents of misconduct while on active duty outweighed the mitigation evidence offered. Finally, the Board believed that it would be unjust to characterize your less than honorable service in the same manner as the service of the thousands of service members who, unlike you, honorably completed their enlistments without engaging in misconduct warranting the early curtailment of their service. Therefore, the Board did not find an upgrade of your discharge to General (Under Honorable Conditions) or Honorable to be warranted in the interests of justice.

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 is attached 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

