



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

██████████
Docket No. 7914-25
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 8 May 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), 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) of a qualified mental health provider and your response to the AO.

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:

- You enlisted in the Navy and began a period of active duty on 4 February 1986.
- On 5 May 1987, you received your first nonjudicial punishment (NJP) for violation of Article 112a, Uniform Code of Military Justice (UCMJ) due to wrongful use of the controlled substance, cocaine. Following your NJP, you were issued administrative counseling warning that you were being retained but that further misconduct could result in adverse administrative action.

- On 28 May 1987, you received a second NJP for violating Article 86, UCMJ, by failing to go to your appointed place of duty at prescribed time on two separate occasions.
- On 23 September 1987, you were notified of processing for administrative separation by reason of misconduct due to drug abuse, and you elected to voluntarily waive your right to a hearing before an administrative discharge board.
- On 7 October 1987, it was reported that you had again tested positive for cocaine and were being processed for administrative separation as a result.
- On 25 October 1987, Commander, Naval Military Personnel Command, approved your discharge under Other Than Honorable (OTH) conditions and specified that your narrative reason for separation include “use” as the primary basis for misconduct due to drug abuse. You were so discharged on 20 November 1987.

In your application to this Board, you express a desire for your discharge character of service be upgraded and contend that:

- Your discharge warrants an upgrade on principles of equity, clemency, and newly understood medical context.
- You now understand that your previously undiagnosed traumatic brain injury (TBI) from childhood and untreated mental health issues may have contributed to your behavior.
- You believe that an upgraded characterization, taking these factors into account, would more accurately reflect the context of your service. Specifically, with respect to your TBI, you state that you were rendered unconscious at age eight after being struck in the back of the head with a bat. More than 30 years later, evidence of post-discharge medical observation notes findings that appear consistent with a healed skull fracture.
- You have struggled with depression, anxiety, and sleep disruption throughout your adult life, for which you take prescribed medications.
- Post-service, you contribute to your local community and cares daily for your elderly mother.

In support of your application, you submitted a personal statement with a detailed timeline, your health records and prescription information, a doctor’s letter, records of your treatment with a progress plan, letters of support, a criminal history background check reflecting two arrests for assault in 1997 and 1998, with no other arrests, and a photograph of your healed head injury.

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. The Board noted you do not deny committing the misconduct that formed the basis of your administrative separation and OTH discharge.

Therefore, the Board determined the presumption of regularity applies to your OTH discharge and no error exists with your record.

However, because you contend that TBI or another mental health condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

There is no evidence that he was diagnosed with TBI or a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of TBI or a diagnosable mental health condition. He denied a history of TBI and mental health symptoms during his pre-enlistment processing. The Petitioner has provided medical evidence of interfering symptoms of TBI and mental health concerns that are temporally remote to his military service. While it is possible that a childhood TBI may contribute to remote cognitive symptoms, there is insufficient information to provide a nexus with his misconduct, particularly given the absence of report of TBI in service records.

The AO concluded, “Based on a review of all available evidence, it is my considered clinical opinion that there is some post-service evidence from the Petitioner and his family of TBI that may have occurred prior to military service. There is insufficient evidence of mental health concerns that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to TBI or mental health concerns.”

In response to the AO, you provided additional evidence in support of your application. After reviewing your rebuttal evidence, the AO remained unchanged.

The Board applied liberal consideration to your claim that you suffered from a mental health condition and TBI, 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. Applying such liberal consideration, the Board found sufficient evidence of a diagnosis of mental health condition that may be attributed to military service and sufficient evidence of TBI prior to you entering 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 TBI or 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 or TBI.

In addition to applying liberal consideration to your claim that you suffered from a mental health condition and TBI, 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 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 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 mental 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 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 Board also 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. 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. While the Board commends you for your post-service accomplishments and acknowledged the personal difficulties you have endured, ultimately, the Board concluded an upgrade of your discharge characterization of service is not 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,

6/1/2026

Executive Director

Signed by: _____