



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

██████████  
Docket No: 1416-22  
Ref: Signature Date

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██  
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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 Board waived the statute of limitation 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 10 June 2022. 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 to 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) (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 licensed clinical psychologist which was previously provided to you. You were afforded an opportunity to submit a rebuttal but did not.

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

You enlisted in the Marine Corps and began a period of active service on 18 April 2000. You were not recommended for promotion on 13 December 2001 and were counseled on 1 February 2002 for underage drinking and possession of a false ID card. On 7 March 2002, you received nonjudicial punishment (NJP) for Article 92 and Article 117 after you disobeyed an order by

continuing to say racial slurs and wrongfully using provoking, reproachful, and disrespectful words. You were subsequently counseled for insufficient funds and a pattern of misconduct, and you received a second NJP for Article 91 due to disrespect of a noncommissioned officer. You subsequently earned a Combat Action Ribbon and other awards after deploying in support of Operation Iraqi Freedom as part of ██████ Battalion, ██████ Marines, ██████ Marine Division. After returning from deployment, on or about 14 October 2003, you wrongfully used cocaine, for which you received a third NJP on 13 January 2004. Consequently, you were notified of administrative separation processing for misconduct due to drug abuse. In recommending your separation, your Sergeant Major noted that you had expressed a desire to be discharged and displayed no remorse for your actions. Further, your commanding officer's recommendation for your separation described you as having displayed obtuse behavior. After notification, you waived consultation with legal counsel, waived your right to an administrative board, and declined in writing to submit a written statement on your behalf. You were discharged with an Other Than Honorable (OTH) characterization of service on 17 March 2004.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge and your contentions that you served proudly but made the mistake of using drugs due to post-traumatic stress disorder and nightmares from combat service. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Because you contend a mental health condition, the Board also considered the AO, which noted in pertinent part:

Among available records, there is no evidence of a mental health diagnosis in military service. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Unfortunately, he has provided no post-service medical records in support of his claims. His personal statement is not sufficiently detailed to establish a clinical diagnosis or nexus with misconduct. Additional records (e.g., medical records describing the Petitioner's diagnosis, symptoms, and a specific link to his misconduct) are required to render an alternate opinion.

The AO concluded, "[b]ased on the available evidence, it is my 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 his misconduct could be attributed to PTSD or another mental health condition."

Based upon this 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 offense. 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. While the Board

considered your drug abuse occurred following your deployment, they also noted that you were processed solely for your drug abuse without addressing the additional serious misconduct occurring prior to your deployment. Finally, the Board considered your lack of remorse for your conduct at the time of your discharge. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. Accordingly, the Board determined that your request does not warrant 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,

6/14/2022

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Executive Director

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