



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

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Docket No: 1893-22  
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 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 29 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, which was received on 22 June 2022.

You enlisted in the Navy and began a period of active duty 15 September 1999. On 20 September 2001, you received non-judicial punishment (NJP) for violations of Article 86 and Article 92 due to an unauthorized absence of approximately 20 minutes and failure to obey a lawful order which prohibited drinking alcohol while in a recall status. As a result, you were warned that future misconduct could result in processing for administrative separation but that you were being retained. On 19 June 2002, you accepted Summary Court-Martial (SCM) and pled guilty pursuant to a pretrial agreement (PTA) to two specifications of violating Article 112a

due to wrongful use of the controlled substance, valium, while aboard a military vessel. Your PTA withdrew and dismissed the charges which had originally been referred to a Special Court-Martial (SPCM) in return for your agreement to testify under a grant of immunity to the individuals who were illegally distributing the controlled substances. While being processed for administrative separation for the reasons of misconduct due to drug abuse and pattern of misconduct, your separation physical noted that you had attempted suicide while under the influence of valium but that you were otherwise psychiatrically "normal." Commander, Carrier Group [REDACTED] approved your discharge for misconduct due to drug abuse and you were discharged, on 12 September 2002, with a final trait average of 2.67.

You previously applied for consideration by the Naval Discharge Review Board (NDRB) contending that you had honorably served for 3 years during wartime and had since resolved your substance abuse problems. The NDRB determined, on 1 March 2012, that your discharge was proper as issued.

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 contention that you were experiencing a time of extreme personal crisis and trauma at the time of your drug abuse because of concerns for your family members who lived in proximity to the World Trade Center at the time of the 9/11 attacks and, when you sought help, that you were simply advised to "get it together" rather than receive mental health care. Although you believe you were suffering from symptoms of post-traumatic stress disorder (PTSD) and admit to personally abusing valium to self-medicate, you state that your command labelled your behavior as willful and persistent. For purposes of clemency consideration, the Board noted you provided advocacy letters but no supporting documentation describing post-service accomplishments.

Because you contend PTSD, the Board also considered the AO, which noted in pertinent part:

Petitioner's OMPF did not contain evidence of a diagnosis of a mental health condition or reported psychological symptoms/behavioral changes indicative of a diagnosable mental health condition. Petitioner did not provide medical/mental health documentation in support of his claim. Although deployment and separation from family, is distressing, it is unclear how the purported trauma meets the criteria for PTSD. He was represented by counsel during his SCM and there is no indication his counsel was concerned about a mental health condition. There is no evidence the Petitioner was not responsible for his misconduct. Additional records (e.g., military medical/mental health records and/or post-service mental health records describing the Petitioner's diagnoses, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "[b]ased on the available evidence, it is my considered clinical opinion, there is insufficient evidence of a diagnosis of PTSD or another mental health condition that can be attributed to military service, or that his in-service misconduct/behavior can be attributed to PTSD or another mental health condition.



In response to the AO, you provided post-discharge medical records.

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 NJP and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included two drug offenses. In addition, the Board considered that you already received a measure of mitigation for your drug offenses when the Navy agreed to enter into a PTA that allowed your charges to be adjudicated at a SCM instead of a SPCM. In the Board's opinion, you likely would have received a punitive discharge at a SPCM based on your drug offenses. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. Finally, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that can be attributed to military service, or that your in-service misconduct/behavior can be attributed to PTSD or another mental health condition. While the Board considered your extensive post-discharge medical records, the Board was unable to find a nexus between your misconduct and a mental health condition other than your substance use disorder. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor 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, 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,

7/15/2022

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Executive Director

Signed by: █