



**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: 2103-22  
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 5 August 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, which was previously provided to you. You were afforded an opportunity to submit a rebuttal but chose not to do so.

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 duty on 22 September 2014. You served without incident until 2017, when you received three counseling for non-recommendation for promotion due to lack of leadership, initiative, maturity, and judgment. During this period, you had used LSD and marijuana. After your promotion to Sergeant in February of 2018, you self-referred to the Substance Abuse and Rehabilitation Program (SARP); you were diagnosed with an Alcohol Use Disorder (AUD) but were not found to be substance dependent under

contemporary diagnostic criteria. On 10 April 2018, your statement to the Naval Criminal Investigative Service admitted to your use of LSD and marijuana from 2017. As a result, you accepted nonjudicial punishment (NJP) for wrongful use of controlled substances and, after completing your period of restriction, entered substance abuse treatment from August – September of 2018. You were permitted to begin terminal leave after completing your rehabilitation and discharged, on 21 November 2018, with a General (Under Honorable Conditions) characterization upon completion of your obligated active duty period with final proficiency and conduct marks of 4.4/4.4.

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 change your reentry code to permit reenlistment and your contentions that you struggled with your emotions after your father suffered a heart attack and after experiencing the death of a fellow Marine by drowning. You assert that these incidents led to progressively heavier drinking, poor judgment, and bad decisions. You argued that you self-referred to SARP after trying controlled substances as an escape from your mental health issues and realizing that your self-medication was making everything worse. For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments and an advocacy letter.

Because you contend that a mental health condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

Petitioner provided documentation of an Alcohol Use Disorder diagnosis with no reference to another MHC during his military service. Petitioner did not provide clarifying information about his depression claims (i.e., symptoms experienced). The lack of clarifying information made available did not provide enough markers to establish an onset and development of mental health symptoms or identify a nexus with his misconduct. Petitioner's statement to his command indicated his misconduct was the result of stress and although healthy coping skills are important, the lack thereof does not constitute a MHC. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific self-medication role) 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 MHC, other than his Alcohol Use Disorder, that can be attributed to military service, or that his in-service misconduct/behavior could be attributed to a MHC.”

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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included multiple drug offenses. Additionally, the Board concurred with the AO regarding your contended MH conditions. Finally, the Board determined you already received a large measure of clemency from the Marine Corps when they chose to allow you to reach your end of obligated active service without processing you for misconduct; thereby sparing you a likely Other Than Honorable characterization of service. Therefore, the Board determined your current reentry code of

“RE-4B” accurately represents your history of in-service drug use which, while not per se prohibitive of reenlistment, signals the need for significantly more thorough screening in the event you should seek to reenlist. In light of your substance abuse rehabilitation treatment records reflecting a high potential for relapse, the Board found your reentry code particularly appropriate and observed no error or injustice in its assignment. While the Board commends your post-discharge accomplishments and good character, after applying liberal consideration, the Board did not find evidence of an error or injustice that warrants changing your reentry code or granting clemency in your case. 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,

8/18/2022

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