



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

■  
Docket No: 2444-22  
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. 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 statute of limitation was waived 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 8 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, applicable statutes, regulations, and policies, to include 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 an Advisory Opinion (AO) from a qualified medical professional dated 13 June 2022. Although you were provided an opportunity to respond to the AO, you chose not to do so.

During your enlistment processing you disclosed using marijuana. However, an enlistment waiver was not required allowing you to proceed with your processing. You enlisted in the Navy and began a period of active duty on 11 September 1997. On 6 August 1998, you were diagnosed with cannabis dependence, hallucinogen abuse, cocaine abuse, and a personality disorder after you were psychiatrically evaluated for suicidal ideations. As part of your evaluation, you disclosed to the medical provider that you did not want to go on a ship with men as you know you cannot control your homosexual behavior. As a result of your diagnosis, you were recommended for administrative separation.

On 21 September 1998, you were notified of your impending administrative separation as a result of your personality disorder, at which time you waived your right to consult with military counsel. On 5 November 1998, you were discharged with a General (Under Honorable Conditions) (GEN) characterization of service by reason of personality disorder.

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 contentions that: (1) you incurred a mental health condition during (MHC) military service, and (2) your discharge characterization, reentry code, and separation codes should be changed based on the repeal of Don't Ask, Don't Tell (DADT). For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

Based on your assertion that you incurred mental health concerns during military service, which might have mitigated your discharge character of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with the AO. The AO stated in pertinent part:

During military service, he was diagnose with substance use disorders and a severe personality disorder. His diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. A personality disorder diagnosis is pre-existing to military service by definition, indicated a lifelong characterological traits unsuitable for military service, and is neither incurred in nor exacerbated by military service. Substance use is incompatible with military readiness and discipline and considered amenable to treatment, depending on the individual's willingness to engage in treatment. However, there is no evidence that he was not aware of his misconduct or not responsible for his behavior. Unfortunately, he has provided no evidence of another mental health condition. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "based on the available evidence, it is my clinical opinion that there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition, other than his diagnosed personality disorder."

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Department of Defense's current policies, standards, and procedures for correction of military records following the DADT repeal of 10 U.S.C. 654 provides service Discharge Review Board with guidance to grant requests to change the characterization of service, narrative reason for discharge, and reenlistment code when the original discharge was based solely on DADT or a similar policy in place prior to enactment of it and there are no aggravating factors in the record, such as misconduct. The Board determined

you were not solely discharged as a result of DADT but due to your personality disorder. As a result, the Board determined the DADT repeal guidance was inapplicable to you.

Based on this finding, the Board considered whether relief was applicable as a matter of justice based on your claim of a mental health condition. Ultimately, the Board determined your claim was insufficient to merit relief. The Board concurred with the AO that there is insufficient evidence that a mental health condition may be attributed to your military service and that your personality disorder was a preexisting condition. Further, the Board took into consideration that you failed to disclose an extensive history of polysubstance abuse that, most certainly, would have disqualified you for enlistment. Based on these factors, the Board concluded your assigned characterization of service remains appropriate. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service, changing your reentry/separation 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 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 attaches 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,

8/24/2022

