



**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: 2713-22  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 28 September 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 this 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 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) furnished by a qualified mental health professional, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

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

You enlisted in the Marine Corps and began a period of active duty on 16 April 1990. You were granted a waiver for illegal use of a controlled substance while in the Delayed Entry Program. On 15 May 1991, non-judicial punishment (NJP) was imposed on you for unauthorized absence

(UA). On 20 June 1991, you were found guilty at summary court martial (SCM) on for wrongful use of cocaine. Subsequently, you were counseled on your drug abuse and warned that failure to take corrective action may result in administrative separation. On 1 August 1991, you were diagnosed as a cocaine abuser and completed rehabilitation treatment that same month. On 17 February 1992, a second NJP was imposed on you for conspiracy to commit assault. You were again counseled on your misconduct and warned that further misconduct would result in administrative separation processing. On 1 September 1992, you were again evaluated for your substance abuse and diagnosed as a cocaine and alcohol abuser. Later, you were convicted by a second SCM for UA and wrongful use of cocaine. As a result, you were notified of administrative separation processing for drug abuse during which you waived your rights to consult with military counsel and to an administrative separation board. Your commanding officer recommended to the separation authority (SA) that you be discharged for drug abuse with an Other Than Honorable (OTH) characterization; which, after a legal review, was approved by the SA on 8 May 1993. You were discharged on 12 May 1993.

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 was not limited, your request to upgrade your characterization of service and contention that you began to suffer from mental health issues after returning from Kuwait. In addition, you assert that your “nightmares and physical well-being are at stake,” that your lack of sleep and assistance for your post-traumatic stress disorder (PTSD) is ruining your life, and you attempted to wipe out traumatic memories with your substance abuse. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board’s review, a qualified mental health professional reviewed your request and provided the Board with an AO on 24 June 2022. The AO stated in pertinent part:

During military service, the Petitioner was diagnosed with a substance use disorder. Substance use is incompatible with military readiness and discipline and considered amenable to treatment, depending on the individual’s willingness to engage in treatment. Unfortunately, he has provided no medical evidence to support his claims. His personal statement is insufficiently detailed to establish clinical symptoms or a nexus with his misconduct, given his history of substance use prior to entry into service. Additional records (e.g., 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, “it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to PTSD.”

Based upon this review, the Board concluded that your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your two NJPs and two SCM convictions, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included

multiple drug offenses. The Board determined that illegal drug use by a Marine is contrary to Marine Corps core values and policy, renders such Marines unfit for duty, and poses an unnecessary risk to the safety of their fellow Marines. In addition, the Board considered that you entered the Marine Corps with a drug waiver and complete substance abuse treatment while on active duty. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit. The Board further concluded that the discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your separation with an OTH. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service, and there is insufficient evidence your misconduct could be attributed to PTSD. As a result, the Board determined your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH. 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 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,

9/30/2022

