



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



Docket No: 2967-22  
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 1 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 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 21 June 2022. You were provided an opportunity to respond to the AO, but chose not to do so.

During your enlistment processing you disclosed prior use of marijuana. A physical violence interview was conducted allowing you to proceed with your enlistment. On 7 January 1998, you enlisted in the U.S. Navy and began a period of active duty. On 18 February 1999, a naval message directed your command to investigate and initiate administrative separation processing due to fraudulent enlistment when it was discovered you failed to disclose your pre-service arrest record for driving under the influence in 1992. In April 1999, your commanding officer (CO) requested a waiver of your fraudulent enlistment which was approved on 19 April 1999. On

27 November 1999, you commenced a period of unauthorized absence (UA) which lasted for 21 days until you surrendered. On 21 December 1999, you received nonjudicial punishment (NJP) for two specifications of UA, missing ship's movement, and the wrongful use of cocaine.

On 22 December 1999, you were notified of your commanding officer's (CO) intent to recommend to the separation authority that you be discharged by reason of misconduct due to drug abuse and commission of a serious offense (COSO), at which time you elected your right to consult with counsel and have your case heard before an administrative discharge board. On 8 March 2000, an administrative discharge board was held and found, by a vote of 3 to 0 that you committed misconduct as a result of your drug use and COSO. The ADB recommended, also by a vote of 3 to 0, that you be discharged with an Other Than Honorable (OTH) characterization of service. On 25 April 2000, your commanding officer also recommended you be separated with an OTH. On 1 May 2000, the separation authority agreed with the administrative discharge board and your CO, directing you be discharged with an OTH by reason of COSO. On 13 May 2000 you were so discharged.

The Board carefully considered all potentially mitigating factors in your petition 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) your discharge was inequitable because it was based on one isolated incident in 27 months of service with no adverse actions, (2) mental and physical health issues occurred during active service period and deployment period in combat zones which are still present to date, and (3) corrections are needed in order for you to receive healthcare and VA (Department of Veterans Affairs) benefits in the interest of justice. 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 PTSD, the Board requested, and reviewed, the AO. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence to support his claims. Unfortunately, his personal statement is not sufficiently detailed to provide a nexus with his misconduct. 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 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your nonjudicial punishment, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. Further, the Board considered that you had a pre-service history of drug abuse. 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. Lastly, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD. 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 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,

8/16/2022

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