



**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: 3189-22  
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 15 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 the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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 Boards review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 28 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 and an enlistment waiver was granted. You enlisted in the Navy and began a period of active duty on 4 March 2009. On 21 April 2015, you received nonjudicial punishment (NJP) for the wrongful use, possession, etc. of controlled substances. On 3 May 2016, you were found guilty at a special court-martial (SPCM) of unauthorized absence (UA), the wrongful use, possession, etc. of controlled substance and general article 134 for which you were sentenced to confinement for eight months,

forfeiture of pay, reduction in rank to E-1, and to be separated with a Bad Conduct Discharge (BCD). On 6 June 2017, you were so discharged.

On 20 February 2018, the Naval Discharge Review Board (NDRB) denied your request to have your discharge upgraded. NDRB determined 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 contention that you incurred PTSD and other mental health concerns during your military service. Additionally, the Board considered your assertions that: (1) since your discharge the Department of Veterans Affairs (VA) has found your period of service from 8 October 2008 to 7 October 2014, Honorable for VA benefit purposes; (2) the VA found your period of service from 08 October 2014 to 6 June 2017, dishonorable for VA benefit purposes; and (3) you require a discharge upgrade to obtain VA benefits. For purposes of clemency consideration, the Board noted you did not provide supporting documents describing post-service accomplishments or advocacy letters.

Based on your assertion that you incurred PTSD and other 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:

Although the Petitioner's service medical record was not available for review, records from the NDRB review indicate that the Petitioner does have a diagnosis of PTSD that can be attributable to military service in Afghanistan, as well as a substance use disorder that was pre-existing to military service. Substance use is incompatible with military readiness and discipline and there is no evidence he was unaware of his misconduct or not responsible for his behavior. The Petitioner has provided no additional medical evidence of another mental health condition. His personal statement is not sufficiently detailed to establish a nexus with his misconduct. 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, "[b]ased on the available evidence, it is my clinical opinion there is evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD or another mental health condition."

Based on 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 SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included two separate drug offenses. Further, the Board noted, decisions reached by the VA to determine if former servicemembers rate certain VA benefits do not affect previous discharge decisions made by the Navy. The criteria used by the VA in determining whether a former servicemember is eligible

for benefits are different than that used by the Navy when determining a member's discharge characterization. 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 that your misconduct may be attributed to PTSD or another mental health condition. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Sailor and continues to warrant a BCD 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 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,

9/7/2022

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