



**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: 5847-22

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 limitations 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 19 December 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 service 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)/mental health condition (MHC) (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 mental health professional. Although you were provided the opportunity to respond to the AO, you chose not to do so.

You previously requested relief through the Navy Discharge Review Board and were denied relief on 18 March 2010. You previously submitted petitions to the Board for Correction of Naval Records and were denied relief on 21 February 2013 and 19 August 2016.

You enlisted in the United States Navy and commenced a period of service on 13 June 2001. On your enlistment application you disclosed pre-service marijuana use.

On 26 July 2002, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 86, for a period of unauthorized absence (UA), and Article 113, for misbehavior as a sentinel or lookout.

On 23 October 2002, you completed Level I Impact, an alcohol education program. On 24 October 2002, you were given a separation physical wherein you state that you are in "good health" and you check "no" when asked if you are struggling with depression, loss of sleep, substance abuse, and/or mental health issues. You were deemed medically fit for separation and, on 25 October 2002, you were discharged from the Navy with an Other than Honorable (OTH) characterization of service due to misconduct (substance abuse) and assigned an RE- 4 reentry code.

The Board carefully considered all potentially mitigating and/or extenuating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to: (a) your desire to upgrade your characterization of service and (b) your contention that you incurred PTSD while deployed during Operation Enduring Freedom. For purposes of clemency and equity consideration, the Board noted you did not provide documentation related to your post-service accomplishments or character letters.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 20 October 2022. The Ph.D. noted 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. He has provided no post-service evidence of diagnoses of mental health concerns that are attributed to his military service. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms during service or 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 Ph.D. concluded, "it is my considered clinical opinion that there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to a mental health condition."

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. Specifically, the Board felt that your misconduct, as evidenced by your NJP, outweighed these mitigating factors. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about incurring PTSD during deployment and the stressful events occurring your life that impacted your service. The Board considered the seriousness of your misconduct and the fact that it involved substance abuse. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that your conduct was contrary to Navy Corps values and policy and poses an unnecessary risk to the safety of fellow Sailors.

In making this determination, the Board concurred with the advisory opinion that there was no convincing evidence of a diagnosis of PTSD that may be attributed to military service or evidence that your misconduct could be attributed to PTSD. There is no evidence that you were diagnosed with a mental health condition in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. You provided no post-service evidence of diagnoses of mental health concerns that are attributed to your military service, despite the Board's specific request for such records on 16 August 2002. This is the same lack of evidence noted in your previous requests for relief. Unfortunately, your personal statement is not sufficiently detailed to establish clinical symptoms during service or provide a nexus to your misconduct.

The Board concluded that your misconduct was not due to mental health-related symptoms. The Board noted that on your separation physical, you reported to be "in good health" and did not disclose any mental health issues or symptoms that would be indicative of PTSD. As such, the Board found that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. As a result, the Board concluded that your conduct constituted a significant departure from that expected of a Sailor and continues to warrant an OTH characterization of service.

The Board further noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Therefore, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting an upgraded characterization of service as a matter of clemency or equity. 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,

1/11/2023

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Executive Director  
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