



**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. 9072-22  
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 1 May 2023. 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 an advisory opinion (AO) from a qualified mental health professional dated 16 March 2023. Although you were provided an opportunity to comment on the AO, 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 entered active duty with the Marine Corps on 24 September 2001. On 10 July 2003, you received non-judicial punishment (NJP) for incapacitated for the performance of duty and two specifications of failure to obey a lawful order.

On 30 April 2004, you received NJP for disorderly conduct and drunkenness. On 31 May 2006, a special court-martial (SPCM) convicted you of three specifications of wrongful use of methamphetamine, failure to go to appointed place of duty, four specifications of failure to obey a lawful order, attempting to escape custody, and wrongful use of cocaine. You were sentenced to confinement for six months, reduction to E-1, and a Bad Conduct Discharge (BCD). After the BCD was approved at all levels of review, on 17 May 2007, you were so discharged.

The Board carefully considered all potentially mitigating 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 your desire to upgrade your discharge and contention that you incurred PTSD and mental health concerns, which might have mitigated your characterization of service, and contentions you became a family man that contributes to your community. For purposes of clemency and equity consideration, the Board noted you provided advocacy letters and a personal statement.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 16 March 2023. The AO stated in pertinent part:

During military service, the record indicates he was diagnosed with mental health conditions, including PD, MDD, and a substance use disorder. He has provided no additional medical evidence in support of his claims of PTSD. Unfortunately, the available records are not sufficiently detailed to establish a nexus with his misconduct, as there is insufficient information regarding his symptoms and onset. Additionally, he engaged in misconduct prior to his deployment. Additional records (e.g., active duty or post-service mental health records describing the Petitioner's diagnoses, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is some in-service evidence of other mental health conditions that were identified in military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your three NJPs and SPCM, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included several drug offenses. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. The Board also noted that illegal drug use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. The Board also determined your conduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. While the Board noted you were diagnosed with other mental health conditions while on active duty, the Board was unable to draw a nexus between your mental health condition and your

