



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

█  
Docket No. 3258-23  
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 January 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 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 to 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) of a qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

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

You enlisted in the Marine Corps and began a period of active duty on 4 August 2008. Prior to completing your first year of service, on 10 February 2009, you were administratively counseled for violating a squadron order by possessing alcohol in the barracks; this counseling entry also noted that you had failed to follow directions of your course instructor and class leader on several occasions. In rebuttal to your counseling and warnings, you submitted a statement that

you had “found” the bottle and liked it, claiming to have poured the alcohol out and keeping the empty bottle. You served approximately one year without further legal incident until you were administratively counseled, on 2 March 2011, regarding your non-recommendation for promotion due to pending legal action not described in the counseling entry. On 30 March 2010, you were again counseled for providing an unauthorized tour to civilian aboard the air station rather than directing them to the Operations Department to arrange a proper, approved tour. A subsequent counseling entry, on 29 July 2011, documented that you had been arrested by civilian police for allegations of domestic violence which included “choking” your wife. It appears from the record that you were initially facing potential charges of attempted murder which were dropped, although a restraining order was issued by civil authorities and a military protective order (MPO) was also issued. Of note, your service records do not contain documentation regarding the Marine Corps Family Advocacy Case Review Committee’s review of this incident.

On 29 September 2011, you were subject to nonjudicial punishment (NJP) for violations of the Uniform Code of Military Justice (UCMJ) under Article 86, for failing to go at the time prescribed to your appointed place of duty, and under Article 91, for being disrespectful in language and deportment toward a sergeant in the execution of his office. You were issued another administrative counseling the following week advising you of the potential for administrative separation or further punitive action if your misconduct continued.

On 13 October 2011, you were command-referred to substance abuse screening during which you were diagnosed with alcohol abuse with advisement that you could benefit from outpatient treatment. You were later administratively counseled, on 12 January 2012, regarding your lack of integrity after you falsely documented another Marine’s combat fitness test score in spite of the member not participating in the test. Additionally, when questioned about the incident, you failed to tell the truth. On 18 May 2012, a Naval Drug Lab message reported your drug use urinalysis screening as positive for amphetamine and methamphetamine, which resulted in your subsequent NJP for a violation of Article 112a due to wrongful use of those controlled substances. Consequently, you were notified of separation proceedings for misconduct due to drug abuse and pattern of misconduct. After consulting legal counsel, you elected to waive your right to a hearing before an administrative separation board, and the recommendation for your discharge under Other Than Honorable (OTH) conditions was forwarded that same day. Your separation was approved by Commanding General, ██████████, and you were so discharged on 2 August 2012.

Your previous applications to the Naval Discharge Review Board (NDRB) were considered on 30 November 2016 and 28 January 2020. You initially contended that you were treated unfairly by your command and denied the opportunity for a second drug test to assess whether your reported results were due to a false positive. You also contended that your in-service conduct prior to your positive drug test warranted an upgrade. Additionally, you contended that your command did not support your personal issues and indicated that you sought an upgraded discharge for the opportunity to reenlist and obtain veteran’s benefits. However, the NDRB found your contentions insufficient to render your discharge improper or unjust.

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 to “Honorable,” with a reentry code of “RE-1,” and a change to your narrative reason for separation

to “Secretarial Authority” or “For the convenience of the Government.” You also requested that “any negative documents be set aside in their entirety” and that you be issued a corrected discharge. You contend that your discharge was unfair at the time and remains so due to procedural and substantive error, your command was “hasty” in initiating a request for your separation and failed to assist you when you were experiencing difficulties at home, there was never any substantiated finding of an inability to continue to show up to the unit, and your jumped to the conclusion that you could not complete attend drill. For purposes of clemency and equity consideration, the Board considered the entirety of your application.

You also assert that you experienced post-traumatic stress disorder (PTSD) both during and after your military service and believe that PTSD should be considered as a cause of your misconduct while in service. Because you also contend that post-traumatic stress disorder (PTSD) or another mental health condition affected the circumstances of your discharge, the Board also considered the AO. The licensed clinical psychologist provided the following review:

During military service, the Petitioner was diagnosed with an Alcohol Use Disorder, for which he received intensive outpatient treatment. He was provided no post-service medical evidence of another mental health condition. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service of a condition other than Alcohol Use Disorder or provide a nexus with his misconduct, particularly a[s] it is difficult to attribute false statements, unauthorized tours, and domestic violence to a mental health condition. Additional records (e.g., in-service or post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) may contribute to an alternate opinion.

The AO concluded, “it is my clinical opinion there is insufficient evidence of a mental health condition, other than Alcohol Use Disorder, that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. First, the Board observed that you enlisted to serve an initial period of four years under an active duty contract and not under a reserve option contract. Therefore, the Board determined your contention regarding your failure to appear for drills was submitted in error by your legal counsel and not applicable to your case. Second, with respect to your administrative discharge processing for misconduct due to drug abuse, the Board noted that processing under this basis is mandatory for confirmed positive drug tests, which occurred in your case. The Board found no evidence to rebut the presumption of regularity in this regard and, therefore, concluded you were appropriately processed for separation. 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.

Third, the Board concurred with the AO regarding the lack of evidence to substantiate your mental health contentions or to establish a nexus between your purported PTSD and the majority of the misconduct which occurred throughout your service. Therefore, the Board determined you were mentally responsible for your misconduct and that you should be held accountable for your actions. Finally, the Board considered that you were provided multiple opportunities to correct your conduct deficiencies and chose to continue to commit misconduct.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Kurta, Hagel, and Wilkie Memos and reviewing the record liberally and holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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 is attached 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,

2/7/2024

