



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

■  
Docket No. 3476-23  
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 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 November 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)/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, dated 14 September 2023. Although you were provided an opportunity to comment on the AO, you chose not to do so.

You entered active duty with the Marine Corps on 4 June 2001. On 14 August 2002, you received non-judicial punishment (NJP) for unauthorized absence (UA) totaling 27 days. On 14 September 2002, you were formerly counseled on your 27 days of UA. On 17 December 2002, you were formerly counseled on testing positive for marijuana. On 18 December 2002, you received NJP for wrongful use of marijuana. On 18 March 2004, you received NJP for wrongful use of cocaine. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to drug abuse and waived your rights. On 19 April 2004,

you were admitted to the Substance Abuse Rehabilitation Program (SARP) and diagnosed with alcohol dependence. On 29 April 2004, you were discharged from SARP as a treatment failure due to your poor prognosis based on your lack of motivation to continue treatment. On 5 May 2004, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to drug abuse with an Other Than Honorable (OTH) characterization of service. The SA approved the CO's recommendation and directed an OTH characterization of service by reason of misconduct drug abuse. On 21 May 2004, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. On 23 August 2007, the NDRB denied your request after determining that 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 Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to upgrade your discharge and contention that you incurred PTSD during military service and you were diagnosed with PTSD in 2004 but you were unable to obtain a copy of your diagnosis. For purposes of clemency and equity consideration, the Board noted you provided advocacy letters but did not provide supporting documentation describing post-service accomplishments.

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

There is no evidence of a mental health diagnosis in service, although there is evidence he deployed to a combat setting. He has provided no medical evidence in support of his claim. However, he has provided statements from family regarding his symptoms of PTSD and it is plausible that he may have been experiencing symptoms of PTSD following return from combat. Unfortunately, there is insufficient evidence to attribute his misconduct to symptoms of PTSD, given pre-deployment behavior that appears to have continued following deployment. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, 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 some post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to symptoms of PTSD."

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 NJPs and treatment failure, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved drug related 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 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. Further, the Board concurred with the AO that there is insufficient evidence your misconduct could be attributed PTSD. As explained in the AO, there is insufficient evidence to attribute your misconduct to symptoms of PTSD, given your pre-deployment behavior that appears to have continued following deployment. 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 provided 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 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,

11/19/2023

