



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

■  
Docket No. 3821-23  
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 3 January 2024. 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 the advisory opinion (AO) furnished by a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the Navy and commenced active duty on 4 December 2001. On 28 April 2003, you commenced a one-hundred-forty-day period of unauthorized absence (UA), during which time, you missed ship's movement on 24 May 2003, and that ended in your surrender on 15 September 2003.

On 29 September 2003, your command received notice of your positive urinalysis results for cocaine and Tetrahydrocannabinol (THC). On 4 November 2003, you were informed of Special Court Martial (SPCM) charges for UA, missing movement, and wrongful use of cocaine and THC. On 7 November 2003, you were notified of pending administrative separation processing

with an Other Than Honorable (OTH) discharge by reason of misconduct due to drug abuse and misconduct due to commission of a serious offense. You waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board. On 4 February 2004, the pending SPCM charges were withdrawn. The Separation Authority directed your discharge by reason of misconduct due to drug abuse with an OTH characterization of service on 10 February 2004. You were so discharged on 12 February 2004.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 16 November 2005, based on their determination 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 Memo. These included, but were not limited to, your desire to change your discharge characterization of service and your contentions that you were suffering from PTSD and Mental Health issues at the time of discharge, you are now a very active member of Alcoholics Anonymous, and you do your best to help anybody that is sick and suffering. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 13 November 2023. The AO noted in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition or suffered from PTSD while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He did not submit any medical evidence in support of his claim. His personal statement is not sufficiently detailed to establish clinical symptoms 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 AO concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by positive urinalysis, extended UA, and missing ship's movement, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug offense. 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 considered the likely negative impact your misconduct had on the good order and discipline of your command. The Board believed that considerable clemency was extended to you when you were

administratively discharged and the pending SPCM charges that could have resulted in a punitive discharge were dropped.

Additionally, the Board concurred with the AO and determined that there is no evidence that you were diagnosed with a mental health condition or suffered from PTSD while in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. As the AO noted, you did not submit any medical evidence in support of your claim and your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct. Finally, the Board noted you provided no evidence to substantiate your contentions. The Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service and there is insufficient evidence that your misconduct could be attributed to a mental health condition.

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. 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. 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,

1/18/2024

