



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

■  
Docket No. 5690-23  
Ref: Signature Date

Dear ■

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 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 22 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 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 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 5 December 2023. 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 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.

During your enlistment processing you disclosed pre-service infractions of marijuana use and driving under the influence. You were granted an enlistment waiver and signed a statement of

understanding concerning the Marine Corps policy on the illegal use of drugs on 28 October 2005. You enlisted in the U.S. Marine Corps and began a period of active service on 14 November 2005. During your period of active duty, you were counseled multiple times for various reasons to include alcohol related incidents and unauthorized absences (UAs). On 29 February 2008, you received nonjudicial punishment (NJP) for UA and were awarded forfeitures of \$793.00 pay per month for two months for and reduction in rank to E-3. On 2 June 2008, you were found guilty at a special court-martial (SPCM) of two specifications of the wrongful use of cocaine, of the overindulgence in intoxicating liquor or drugs becoming incapacitated for the proper performance of your duties, and of wrongfully distributing some amount of cocaine. You were sentenced to a Bad Conduct Discharge (BCD), confinement for 11 months, forfeiture of \$800.00 pay per month for one month, and reduction in rank to E-1. However, per your pretrial agreement, any confinement in excess of 180 days was suspended for 12 months. Your sentenced was subsequently affirmed and ordered executed and, on 6 May 2009, you were discharged with a BCD.

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 your contention that you incurred PTSD and other mental health concerns during military service. Specifically, you incurred insomnia, bipolar disorder, depression, anxiety, agoraphobia, PTSD, and ringing in your ears. You also contend that: (1) during the court-martial you were cooperative, (2) the deaths of your mother, father, and stepfather and your medical disorder impacted your enlistment, (3) both your father and stepfather were Marines, great men, and great role models who died of cancer due to █ water contamination, (4) you were separated from your wife who eventually filed for divorce, (5) you are very remorseful for your actions, and (6) you would like to become a bonafide veteran and have access to all veteran benefits. For purposes of clemency and equity consideration, the Board noted you provided personal statements, medical documents, and a copy of your Florida identification card.

Based on your assertions that you incurred PTSD and other mental health concerns during military service, which might have mitigated the circumstances of your separation, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated 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. There is behavioral evidence in the record of a possible alcohol use disorder that preceded military service and continued through military service. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. His post-service medical evidence is temporally remote to his military service, and appears unrelated to military service, rather to a post-service train accident. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given pre-service problematic alcohol behavior that appears to have continued in service. 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 insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition, other than a possible alcohol use disorder.”

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 NJP and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it included 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. Additionally, the Board agreed with the AO that, there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service and insufficient evidence to attribute your misconduct to PTSD. As explained in the AO, your post-service medical evidence is temporally remote to your military service, and appears unrelated to military service, rather to a post-service train accident. Additionally, your personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct, particularly given pre-service problematic alcohol behavior that appears to have continued in service. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veteran’ benefits, or enhancing educational or employment opportunities. As a result, the Board concluded your conduct constituted a significant departure of that expected of a service member and continues to warrant a BCD. 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,

2/2/2024

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