



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

██████████  
Docket No. 9596-23  
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 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 24 May 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 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.

You enlisted in the Marine Corps and began a period of active duty on 27 July 1998. You were administratively counseled in July 1999 for not wearing a seat belt. You were counseled again, on 15 November 1999, for disobeying a direct order, drinking underage, and drinking in a public place which resulted in your referral to alcohol abuse classes. On 4 February 2000, you were subject to nonjudicial punishment (NJP) for a violation of the Uniform Code of Military Justice under Article 92 for wrongfully violating a lawful order by consuming alcohol under the legal age. Your punishment included reduction to the grade of E-2, 60 days restriction, and a month of partial forfeiture of pay. Your second NJP occurred, on 5 October 2000, for a violation of

Article 86 due to your failure to go to your appointed place of duty at the rifle range. Your punishment included 14 days restriction and extra duty. You were also administratively counseled that continued misconduct could result in administrative separation.

On 1 August 2001, a Naval Drug Lab message reported your urinalysis positive for amphetamine and/or methamphetamine use. You were subsequently notified of separation proceedings for misconduct due to drug abuse. After consulting legal counsel, you waived your right to a hearing before an administrative separation board and also elected not to submit a statement. You were then subject to Summary Court-Martial (SCM), on 1 November 2001, for violations of the UCMJ for two specifications under Article 112a for marijuana use, in addition to your positive urinalysis for amphetamine / methamphetamine. Your sentence included reduction to the pay grade of E-1 with 60 days restriction and one month partial forfeiture of pay. The recommendation for your discharge under Other Than Honorable (OTH) conditions for the basis of drug abuse was forwarded. In the meantime, you were subject to a third NJP, on 28 January 2002, for a violation of Article 86 of the UCMJ after being absent without authority from your appointed place of duty. Your punishment included an additional 14 days restriction with one month partial forfeiture of pay. Finally, on 22 April 2002, you were discharged with an OTH due to your drug abuse.

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” and your contentions that post-traumatic stress disorder (PTSD) and/or other mental health conditions, of which you were unaware during your military service, contributed to your in-service misconduct. You argue that you attempted to self-medicated of your symptoms as a result of lack of mental health treatment. For purposes of clemency and equity consideration, the Board noted you submitted a personal statement and a letter from your medical provider.

Because you contended that PTSD or another mental health condition affected the circumstances of the misconduct which resulted in your discharge, the Board also considered the previously referenced 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. He has provided medical evidence of mental health conditions that are temporally remote but may have been present during his military service. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, given pre-service behavior and refusal of evaluation in service. Additional records (e.g., post-service mental health records describing diagnosis, symptoms, and their specific link to his misconduct) may aid in an alternate opinion.

The AO concluded, “it is my clinical opinion there is insufficient evidence 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.”

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 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. Further, the Board found showed a complete disregard for military authority and regulations. Additionally, the Board concurred with the clinical opinion 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 in-service misconduct. As explained in the AO, the medical evidence of mental health conditions is temporally remote to your military service and available records are not sufficiently detailed to establish a nexus with your misconduct. Therefore, the Board was not persuaded by your arguments of self-medication.

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,

6/12/2024

