



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

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Docket No. 9920-23  
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 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 6 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 this Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your service 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 and your response to the AO.

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.

You enlisted in the United States Marine Corps and commenced a period of service on 30 April 2007. On your enlistment application, you failed to disclose a significant history of pre-service substance and alcohol use disorders, including an alcohol-related arrest and your completion of a

21-day inpatient rehabilitation treatment program (for benzodiazepines, cocaine, and prescription opioid medications) approximately four months prior to enlistment.

From April 2008 to November 2008, you deployed to █ in support of █. Subsequently, in 2009 you were meritoriously promoted twice. In October 2009, you were deployed to █ in support of █.

In January 2010, you were diagnosed with Post Traumatic Stress Disorder (PTSD) and Benzodiazepine Abuse after your friend was killed in action. You were medically evacuated from █ back to the United States for treatment. Medical records report that you were “found to have been acutely intoxicated by command members. A subsequent search of his gear revealed copious numbers of benzodiazepines to include 752 tablets of diazepam 10 mg (trade name Valium), 100 tablets of diazepam 5 mg, 2429 tablets of alprazolam (trade name Xanax) of varying doses and two syringes/needles with unknown content (although thought to have been heroin).” It was discovered that you had obtained these drugs from a pharmacy in a local Afghan market.

Beginning in February 2010, you received and successfully completed an Intensive Outpatient Treatment Program (IOP) for benzodiazepine dependence, receiving a fair prognosis. You also completed an IOP group treatment for combat PTSD and began Cognitive Processing Therapy for PTSD. Your reported continued abstinence and your continuing care treatment case for substance use disorder was recommended to “be closed as a fully successful completion of treatment” with a good prognosis for maintaining abstinence. Due to your diagnoses, you were placed on limited duty and excused from handling weapons, driving government vehicles, overnight watches, deployment, and the firing range.

On 6 January 2011, you were found guilty at non-judicial punishment (NJP) of violating Uniform Code of Military Justice (UCMJ) Article 92, for failure to obey an order by obtaining unauthorized controlled substances from the Lakari Bazaar pharmacy during the Battalion's deployment to Afghanistan for combat operations. You did not appeal this NJP. In February 2011, you were formally counseled regarding a period of unauthorized absence (UA) from your duty location. At that time, your psychiatrist opined that your “PTSD symptoms did not have a significant effect on [your] judgment, and was a minimally contributing factor to [your] misconduct, largely outweighed by the contribution of his already existing substance dependence.”

In March 2011, you were hospitalized due to arm pain that was identified as two abscesses that were attributed to intravenous drug use. Medical records report that “[t]rack marks were later identified per staff and a preliminary UDS [urinalysis] was positive for benzos, opiates, and cocaine... While the patient does have a diagnosis of PTSD, it is the collective opinion of his mental health treatment team that this is not a significant contributing factor to his drug use.” You re-entered the Continuing Care Program for substance use and were placed on legal hold pending adjudication of your misconduct.

On 29 April 2011, you received a Certificate of Release or Discharge from Active Duty (DD 214) after fraudulently reporting that you were not in a legal hold status. You returned to your home of residence without authorization, and remained absent until 24 June 2011, when you were apprehended by federal authorities based on federal warrant. On 25 August 2011, you were found

guilty at Special Court Martial (SPCM) of violating UCMJ Article 86, for a 56-day period of UA terminated by apprehension, Article 92, for violating a lawful order, and Article 112(a), for three specifications of wrongful use of a controlled substance. You were sentenced to six months confinement, forfeitures of \$978 pay per month for six months, reduction in rank to E-1, and a Bad Conduct Discharge (BCD). You were placed on appellate leave pending your appeal.

On 29 March 2012, the Navy-Marine Corps Court of Criminal Appeals (NMCCA) found that the findings and sentence were correct in law and fact, and no errors were identified. However, NMCCA found that the sentence was inappropriately severe in light of your combat service and evidence of mental health problems. The Court ordered that the BCD be set aside and approved remainder of the sentence.

On 6 July 2012, you were issued a Correction to DD Form 214, Certificate of Release or Discharge from Active Duty (DD 215), changing the record to reflect that you received an Other than Honorable (OTH) characterization due to a Court Martial. On 5 November 2012, you received a DD 214 with this same information reflected.

You previously submitted an application to the Naval Discharge Review Board (NDRB) and were granted relief on 21 November 2019. Specifically, your characterization was upgraded to “General (Under Honorable Conditions),” (GEN) your separation code was changed to “Secretarial Authority,” and your separation code was changed to “JFF1;” however, the NDRB did not change your “RE-4B” reentry code. You submitted another application to the NDRB requesting further upgrade to “Honorable” and a change to your reentry code, which was denied on 15 June 2023.

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire to upgrade your characterization of service and change your reentry code, (b) your assertion that you were struggling with mental health conditions due to your combat service, (c) the impact that your mental health had on your conduct, and (d) your overall record of service outside of the misconduct. For purposes of clemency and equity consideration, the Board noted that you provided documentation related to your post-service accomplishments and character letters.

In your request for relief, you contend that you incurred Post Traumatic Stress Disorder (PTSD) and other mental health conditions due to your combat service, which drove you to self-medicate with drugs. In support of your request, you provided your service medical record, as well as records from your civilian physician listing mental health diagnoses of Generalized Anxiety Disorder (GAD); Benzodiazepine dependence, continuous; and history of PTSD. You also provided treatment records from August 2023 listing diagnoses of Long-term drug therapy, chronic PTSD, and Mixed anxiety and depressive disorder. As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 16 April 2024. The Ph.D. noted in pertinent part:

During military service, the Petitioner was diagnosed with PTSD that was attributed to military combat. He was also diagnosed with a substance use

disorder, that was deemed pre-existing to military service. Substance use is incompatible with military service and does not remove responsibility for behavior. While it is reasonable that the Petitioner's combat experiences contributed to the relapse of his substance use disorder, the most weight has been placed upon the opinions of his treatment team during his military service. His treatment team concluded that his substance use disorder was his primary mental health condition, rather than a secondary effect of PTSD symptoms. 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 Ph.D. concluded, "there is in-service evidence of a diagnosis of PTSD due to combat. There is insufficient evidence to attribute all of his misconduct to PTSD."

The Board considered your response to the AO, which argued that liberal consideration must be applied to your case and that proper weight should be given to your combat service and resulting mental health conditions.

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about mental health issues and the possible adverse impact on your service. Specifically, the Board felt that your misconduct, as evidenced by your NJP and SPCM conviction, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the likely negative impact that your conduct had on the good order and discipline of your command. The Board determined that drug abuse is contrary to Marine Corps values and policy, renders such Marine unfit for duty, and places an unnecessary burden on fellow shipmates.

In making this determination, the Board concurred with the AO that your substance use disorder was pre-existing to military service, and would have been service disqualifying, as substance use is incompatible with military service. Your failure to disclose this required and relevant information placed both you and your fellow Marines at risk. The Board found that while your combat experiences contributed to the relapse of your substance use disorder, the substance use disorder was your primary mental health condition, rather than a secondary effect of PTSD symptoms.

The Board also considered clemency evidence in determining the proper measure of relief. The Board commends your post-service accomplishments and efforts towards sobriety. However, after thorough review, the Board felt that you have already been granted an appropriate level of relief by NMCCA and NDRB. Your punitive discharge was set aside and you received a GEN characterization of service and a neutral separation basis. The Board determined that a GEN characterization is appropriate when significant negative aspects of a Marine's conduct outweighs the positive aspects, which they found to be accurate in your case. In your case, you fraudulently failed to disclose a significant pre-service drug addiction, bought a substantial amount of illegal drugs from a local market while deployed to a combat zone, used said drugs while in a combat zone, despite being in a leadership position and charged with the safety of

your fellow Marines, and later continued to use drugs after receiving treatment. For these reasons, the Board concluded that a GEN remains the appropriate characterization of service in your case. The Board also did not find an injustice with your assigned RE-4B reentry code. The Board concluded that you were assigned the correct reentry code based on the totality of the circumstances.

Therefore, 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.

Regarding the portion of your request pertaining to the NATO Medal and Presidential Unit Citation, the Board found that you have not exhausted all administrative measures. For that portion of your request, you are directed to Headquarters, United States Marine Corps, Military Awards Branch.

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,

5/24/2024

