



**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. 10167-23  
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 7 August 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 an advisory opinion (AO) from a qualified mental health professional, dated 20 May 2024. Although you were provided an opportunity to comment on the AO, you chose not to do so.

You enlisted in the Marine Corps and entered active duty on 01 August 2000. You received an enlistment waiver for pre-service marijuana use. On 14 December 2000, you received non-judicial punishment (NJP) for absence from appointed place of duty, disobeying a lawful order, drunk on duty, and incapacitated for the performance of duty. On 23 March 2001, you received NJP for unauthorized absence (UA) totaling 22 days. On 18 September 2001, a special court-martial (SPCM) convicted you of absence from appointed place of duty, UA totaling 31 days, disrespectful in language toward a non-commissioned officer (NCO), resisting apprehension, two specifications of wrongful use of marijuana, assault, and drunk and disorderly conduct. You were

sentenced to confinement for four months, forfeiture of pay, and a Bad Conduct Discharge (BCD). After the BCD was approved at all levels of review, on 23 April 2004, you were so discharged.

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 contentions that you incurred PTSD/mental health concerns due to having psychological and addition problems, these conditions should mitigated the circumstances that led to your BCD, and you have been sober since 2008. For purposes of clemency and equity consideration, the Board noted you provided documents from your Official Military Personnel File (OMPF) but no supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 20 May 2024. The AO stated in pertinent part:

That there is evidence that the Petitioner was diagnosed with malingering, Polysubstance Dependence and Personality Disorder while in service. All of these are considered disqualifying for military service. 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJPs and SPCM, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug related 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 concurred with the AO that there is insufficient evidence your misconduct could be attributed PTSD or a mental health condition. As explained in the AO, you were diagnosed with malingering, Polysubstance Dependence and Personality Disorder while in service and your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct. Finally, the Board noted that there is no evidence in your record, and you submitted none, to substantiate your contentions that you were told you would receive a medical discharge due to having psychological and addition problems. Even if true, the Board noted you would have been ineligible for disability processing based on your misconduct that resulted in a BCD. Finally, the Board also considered that your SPCM underwent appellate review without any finding of error related to your claim.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. While the Board commends

your post-discharge sobriety and 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 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,

8/20/2024

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