



**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. 1547-24  
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 1 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 as well as the 4 April 2024 guidance from the Under Secretary of Defense for Personnel and Readiness relating to the consideration of cases involving both liberal consideration discharge relief and fitness determinations (Vazirani Memo) (collectively the "Clarifying Guidance"). The Board also reviewed the 24 June 2024 advisory opinion (AO) from a Licensed Clinical Psychologist.

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.

A review of your record shows that you enlisted in the Marine Corps and commenced active duty on 2 July 2007. On 29 November 2007, you received nonjudicial punishment for altering your military ID card in order to buy alcoholic beverages. After your NJP, you were issued a written warning. On 9 November 2017, you underwent an alcohol and drug screening and completed all recommendations. On 21 November 2017, you were convicted by a summary court-martial for

use of cocaine. Consequently, you were notified of the initiation of administrative separation processing for drug abuse and, ultimately, discharged with an Other Than Honorable characterization of service due to misconduct. In 2022, you filed an application with the Navy Discharge Review Board (NDRB) seeking to have your discharge upgraded and associated relief. The NDRB informed you by letter dated 31 May 2023 that it granted you relief in the form of upgrading your discharge to Honorable and changing your basis for discharge to Secretarial Authority. In explaining its decision for granting you relief, the NDRB explained that it applied special and liberal consideration to your contentions in accordance with the Kurta Memo.

In your petition, you request to be awarded a service disability retirement, alternatively, to be placed on the temporary disability retired list (TDRL), or otherwise awarded a military retirement. In support of your request, you contend that you deployed to both Iraq and Afghanistan, and that you suffered from an unfitting condition that should have been referred to a medical evaluation board.

In order to assist it in reviewing your petition, the Board obtained the 24 June 2024 AO. According to the AO, there is post-service evidence from the Department of Veterans' Affairs (VA) that you have post-traumatic stress disorder (PTSD) that may be attributed to military service and you provided post-service evidence to attribute your misconduct to PTSD.

The Board carefully reviewed your petition and the material that you provided in support of your petition and disagreed with your rationale for relief. In keeping with the letter and spirit of the Clarifying Guidance, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced, and their possible adverse impact on your service. In reaching its decision, the Board observed that, in order to qualify for military disability benefits through the Disability Evaluation System (DES) with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you met the criteria for unfitness as defined within the disability evaluation system at the time of your discharge. Despite its application of special and liberal consideration, the Board observed no evidence that you had any unfitting condition while on active duty. In its application of the Clarifying Guidance, the Board acknowledged that you had a condition or experience that may excuse or mitigate your discharge, which, at least for the sake of argument, occurred, or was worsened, during your naval service. In accordance with the Vazirani Memo, the Board first applied liberal consideration to your assertion that your PTSD potentially contributed to the circumstances resulting in your discharge to determine whether any discharge relief is appropriate. After making that determination, the Board then separately assessed your claim of medical unfitness for continued service due to PTSD as a discreet issue, without

applying liberal consideration to the unfitness claim or carryover of any of the findings made when applying liberal consideration. Thus, the Board analyzed whether your PTSD condition actually excused or mitigated your discharge. On this point, the Board observed that the NDRB already provided you relief by upgrading your discharge characterization and granting associate relief based on your mental health condition. Inasmuch as the NDRB determined that your relief was based on mitigation, and there is no evidence that your punishment was improper at the time it was imposed, the Board concluded that, even if you were referred into the DES while you were in service, your administrative processing due to misconduct would have taken precedence over disability processing.

With respect to its analysis of your request for a service disability retirement, the Board observed there is insufficient evidence that you had an unfitting condition while you were on active duty. On this point the Board found insufficient no evidence in your service records, and you did not provide any, demonstrating that while you were in service you had an unfitting condition within the meaning of the DES. The Board noted that there is no indication that anyone in your chain of command observed that you were unfit to perform your duties due to any medical conditions. Rather, it is clear that you were discharged due to your abuse of a controlled substance and, more likely than not, would have continued your active duty service but for the misconduct processing. To be eligible for a service disability retirement, a service member must have conditions that have been medically determined to be unfitting at the time of service. In your case, the proximate reason for your discharge was your misconduct. In sum, in its review and liberal consideration of all of the evidence and its careful application of the Clarifying Guidance, the Board did not observe any error or injustice in your naval records. 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,

8/22/2024

