



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

█  
Docket No. 1941-24  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 23 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 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 and your response to the AO.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Marine Corps, with a history of involvement with civilian authorities due to underage consumption of alcohol and began a period of active duty on 19 July 1999. On 30 July 2000, you were subject to nonjudicial punishment for violation of the Uniform Code of Military Justice under Article 92 for dereliction in the performance of your duties by willfully disregarding an alarm to muster on 26 July 2000 as part of the React Force, in response to a suspected explosive device aboard the base. As a result, you were reduced to the paygrade of E-1 and required to forfeit \$502 per month for two months. You were later issued administrative

counseling, on 31 July 2000, for alcohol abuse, which resulted in your hospitalization the day of your NJP, in addition to an incident of physical aggression toward another Marine.

On 12 April 2001, you were convicted by Summary Court-Martial (SCM) for violation of UCMJ under Article 90, for failure to obey a superior commissioned officer, Article 91, for failure to obey a superior noncommissioned officer, and Article 92, for failure to obey a lawful general regulation by consuming alcohol under the legal drinking age. You were placed into a restricted status for 60 days and forfeited \$695 pay as punishment.

On 1 May 2001, you were subject to a second NJP for a violation of Article 112a due to wrongful use of the controlled substance, Ecstasy, for which you were punished with an additional 45 days of restriction as well as 45 days of extra duties and two months forfeiture of \$521 per month.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Marine Corps on 6 August 2001 with an Other Than Honorable (OTH) characterization of service, your narrative reason for separation is "Misconduct (Drug Abuse)," your separation code is "HKK1," and your reenlistment code is "RE-4B."

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 for a discharge upgrade and your contentions that your post-traumatic stress disorder (PTSD), in conjunction with your accomplishments since your discharge, warrant consideration of an upgrade on the basis of either liberal consideration, clemency, or a combination thereof. In your personal statement, you provided details regarding your mistreatment while on active duty, additional information regarding the circumstances of your misconduct, and information regarding post-discharge accomplishments. For purposes of clemency and equity consideration, you submit a detailed personal statement, two character letters, a community service award, your Disability Benefits Questionnaires as submitted to the Department of Veterans Affairs (VA), and your service health records with a copy of an in-service psychiatric evaluation.

Because you contend in part that PTSD or another mental health condition affected the circumstances of the misconduct which resulted in your discharge, the Board considered the AO. The AO stated in pertinent part:

Petitioner submitted VA Disability and Benefits Questionnaire (DBQ) dated June 2022 whereupon he was diagnosed with PTSD due to his report of having been "choked out" by a Sergeant while in ██████████. Of note, is that the author of the DBQ wrote, "It should be noted that his civilian treatment record contains numerous details that conflict with his personal account. In particular, his hospital admissions records from 2015 indicate a diagnosis of PTSD secondary to combat related episodes. During this evaluation, the veteran denied any history of combat trauma or personal combat engagement." Thus, it appears as though the Petitioner's

anecdote lacks candor. There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any symptoms of a mental health condition. Additional records (e.g., 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 reviewing your rebuttal evidence, the AO remained unchanged.

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 and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. In addition, the Board noted that your misconduct 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. Further, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition and, more significantly, found the observations of your lack of candor regarding your purported in-service traumas of particular concern with respect to your overarching contentions. The Board noted that the primary impetus behind your drug use was your attendance of "raves" – which are commonly known to involve wide-spread illegal drug use as a core part of the social culture. Although you purport to have initially experimented with ketamine to relax symptoms of PTSD, the Board found your pre-service and in-service history of alcohol abuse, to include the alcohol use which resulted in your first NJP as well as your hospitalization on the eve of your first NJP due to excessive alcohol consumption, indicative of general substance abuse proclivities more so than an intent to self-medicate. Therefore, the Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

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 and commends you for your post-discharge accomplishments, 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,

9/16/2024

