



**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. 1986-24  
4169-22  
3134-21  
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 16 September 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, applicable statutes, regulations, and policies, to include the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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 the advisory opinion (AO) furnished by a qualified mental health professional and your response to the AO.

You previously applied to this Board for an upgrade to your characterization of service and were denied relief on 26 July 2021 and 1 August 2022. The facts of your case remain substantially unchanged.

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 character

of service to Honorable and to change the narrative reason for separation and separation code to “Secretarial Authority.” You contend that: (1) you experienced mental health challenges during your military service and your command made a material error by charging you with drug abuse rather than offering rehabilitation services, (2) your first four years were served honorably and your discharge has been stigmatizing, (3) following your reenlistment, you became involved with individuals who negatively influenced you, (4) while you do not excuse your actions, you acknowledge that you were young and inexperienced at the time, (5) you did engage in the use of drugs and alcohol, which was prevalent during the 1980s, (6) transferring to ██████████ was a mistake, as reconnecting with high school friends in the area led to further issues, (7) during this period, the military implemented random drug testing, which you were required to participate in, ultimately resulting in failed tests and your subsequent separation, (8) you have been happily married for 27 years, have two children, and two grandchildren, (9) as a locomotive engineer, you maintained a drug-and alcohol-free lifestyle, undergoing random urinalysis testing throughout your career; (10) you retired with a flawless record, and (11) you deeply regret the unprofessional conduct you exhibited during your final years of service. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

As part of the Board’s review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 12 July 2024. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment and received no diagnosis. This absence of diagnosis was based on the psychological evaluation, observed behaviors and performance during his period of service, and the information he chose to disclose. Temporally remote to his military service, he has received service connection for a mental health condition. Although the Petitioner has provided some evidence of treatment for physical ailments during service, there is insufficient evidence to attribute chronic substance use to self-medication. More weight has been given to pre-service behavior, in-service denial of mental health symptoms, and current statements regarding substance use due to peer influence. 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 AO concluded, “it is my considered clinical opinion there is post-service evidence from the VA of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition.”

In response to the Advisory Opinion (AO), your counsel submitted additional arguments in support of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your

non-judicial punishment, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it 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. The Board further noted that the rationale you presented during your previous hearings differs from your current assertions, and it appears that you consistently attribute responsibility to external factors. Further, the Board concurred with the AO that, there is insufficient evidence to attribute your misconduct to a mental health condition. As the AO explained, although you provided some evidence of treatment for physical ailments during service, there is insufficient evidence to attribute chronic substance use to self-medication. Additionally, more weight was given to your pre-service behavior, in-service denial of mental health symptoms, and current statements regarding substance use due to peer influence. 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 otherwise not be held accountable for your actions. Further, contrary to your contention that your command made a material error by charging you with drug abuse, the Board noted that you were given multiple opportunities to address and correct your conduct deficiencies during your service. Further, you were even permitted to reenlist despite those deficiencies; however, you continued to engage in further drug related misconduct.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an Other Than Honorable (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 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,

10/11/2024

