



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

█  
Docket No. 2964-24  
6665-13  
Ref: Signature Date

█  
█  
█

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 7 October 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 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) (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 the Naval Discharge Review Board (NDRB) twice, seeking an upgrade to your characterization of service. The NDRB denied your requests, on 20 February 2014 and 28 February 2023, after determining your discharge was proper as issued. This Board also previously denied your request for a change to your reentry code on 6 August 2014. 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 and contentions that you have serious concerns regarding the handling of your case, particularly a failure to consider key evidence. You believe the evidence suggests that your confession to the Naval Criminal Investigative Service was made under duress and motivated by a legitimate fear for your life. At that time, you had not been diagnosed with any conditions, yet you endured severe physical and emotional abuse from intolerant fellow sailors due to your Muslim name. This mistreatment led to a fear that compelled you to falsely confess to drug use to avoid potential harm in military prison. Notably, you never used drugs nor failed a urinalysis, and your service record was Honorable up until that point, with just four months remaining on your contract. You also express that you continue to suffer from night terrors related to these events, which you have endured for over a decade. You seek an upgrade to your discharge status to access the mental health support and financial assistance needed to move forward with your life. For purposes of clemency and equity consideration, the Board considered the evidence 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 30 July 2024. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Temporally remote to his military service, the VA has granted service connection for a diagnosis of PTSD. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, particularly given consistent statements that he did not engage in drug use. 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 clinical opinion there is evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD."

In response to the AO, you submitted rebuttal evidence in the form of a statement and a medical evaluation. After reviewing the new evidence, the original AO remained unchanged based on a determination that the new evidence was not materially different from the medical information previously reviewed.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your non-judicial punishments, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it included multiple drug offenses. 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 noted that illegal drug use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Further, the Board found that your conduct showed a complete disregard for military authority and regulations. Additionally, the Board agreed with the AO that there is insufficient evidence to attribute your misconduct to PTSD. As explained in the AO, available records are not sufficiently detailed to provide a nexus with your misconduct. 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. Finally, the Board was not persuaded by your contention that you falsely confessed to drug abuse and observed that you pleaded guilty to the drug offenses at NJP. The Board also noted that your drug abuse appears to be a continuation of your pre-service drug related misconduct, for which you were granted an enlistment waiver.

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. 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,

10/31/2024

█

Executive Director

Signed by: █