



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

██████████
Docket No. 5775-24
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.

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 on 8 January 2025, has carefully examined your current request. 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)/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 an advisory opinion (AO) from a qualified mental health professional; dated 4 October 2024. Although you were provided an opportunity to comment on the AO, you chose not to do so.

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.

You previously applied to this Board for a discharge upgrade but were denied on 17 December 2019. 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 incurred PTSD or a mental health condition resulting from working as a boiler technician, it was caused by your stressful working environment, and you experienced suicidal ideations, depression, and anxiety. You also contend that you are currently receiving 100% service connected disability from the Department of Veteran Affairs (VA). 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 request and provided the Board with an AO. The AO stated in pertinent part:

Petitioner submitted psychological evaluation dated June 2022 in which the author diagnosed the petitioner with "Prolonged Adjustment Disorder with Mixed Anxiety and Depressed Mood and Cannabis Use Disorder. Of note, is that "prolonged adjustment disorder" is not a DSM-5-TR substantiated diagnosis. Guidance typically directs a licensed mental health professional to change a diagnosis of an Adjustment Disorder if the symptoms cease or persist after six-months. He submitted VA compensation and pension rating noting 100% service-connection for anxiety disorder due to lumbosacral strain, and depressive disorder due to lumbosacral strain as of May 2023. The Petitioner was diagnosed with an Adjustment Disorder in service and had documented thoughts of suicide. It is possible that some of his misconduct could have been mitigated by depression; however, sale and transfer of illegal drugs exceeds that of what would be expected as a result of depression.

The AO concluded, "it is my considered clinical opinion there is sufficient evidence of a post-service mental health condition that may be attributed to military service. There is insufficient evidence that all of 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 five non-judicial punishments, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug offense. The Board determined that illegal drug distribution 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 noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations, disability ratings, and/or discharge classifications are not binding on the Department of the Navy and have no bearing on previous active duty service discharge characterizations. Additionally, the Board observed you were provided the opportunity to correct your conduct deficiencies but chose to continue to

commit misconduct; which led to your discharge. The Board also concurred with the AO that there is insufficient evidence that all of your misconduct could be attributed to a mental health condition. As explained in the AO, while it is possible that some of your misconduct could have been mitigated by depression, the sale and transfer of illegal drugs exceeds that of what would be expected as a result of depression. 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 noted that character of service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your final conduct average was insufficient to qualify for an Honorable characterization of service. In reviewing your extensive record of misconduct and weighing it against your relatively brief period of active duty, the Board felt you were fortunate to receive a General (Under Honorable Conditions) discharge. Your conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of your command.

As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant an General (Under Honorable Conditions) 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,

1/20/2025

