



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. 5897-24
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 11 December 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, 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. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 13 January 2004. On 19 October 2004, you were convicted by a summary court-martial (SCM) of a period of unauthorized absence (UA) totaling 30 days, missing movement, and failure to obey a lawful general regulation by wrongfully purchasing and consuming alcoholic beverages while under the age of 21. On 23 August 2005, you received a mental health evaluation and diagnosed with borderline personality disorder. On 3 September 2005, you received non-judicial punishment (NJP) for a period of UA totaling six days and attempting to purchase a controlled substance (ecstasy).

Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of convenience of the government - personality disorder, misconduct

due to pattern of misconduct, commission of a serious offense, and drug abuse. You waived your right to consult with counsel and present your case to an administrative discharge board. The commanding officer forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Navy with an Other Than Honorable (OTH) characterization of service. The separation authority directed your OTH discharge from the Navy by reason of misconduct due drug abuse and you were so discharged on 23 September 2005.

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 and change your narrative reason for separation and separation code. The Board considered your contentions that: (1) you understand the gravity of your actions and express your sincere remorse for the poor choices that you made, (2) your conduct at the time was a result of personal challenges and struggles that you have since worked diligently to overcome, (3) you were dedicated to your duties and deeply committed to serving your country but was distracted with personal trauma and challenges due to the onset of mental health issues, (4) you understand the importance of military discipline and standards and acknowledge that your actions were in direct violation of those principles, and (5) you have transformed your life and can once again be a productive, responsible, and disciplined member of society, and (6) you have obtained a Bachelor of Science degree and have completed all the academic requirements for a Master of Science degree in Pharmacological Sciences. For purposes of clemency and equity consideration, the Board considered your statement and 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 26 September 2024. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during her enlistment and properly evaluated. [His] personality and alcohol use disorder diagnoses were based on observed behaviors and performance during her period of service, the information [he] chose to disclose, and the psychological evaluations performed by the mental health clinicians. Temporally remote to [his] military service, [he] has received treatment of PTSD from civilian providers attributed to military sexual trauma. Unfortunately, available records are not sufficiently detailed to provide a nexus with [his] misconduct, which appears consistent with [his] identified characterological difficulties. Additional records (e.g., in-service or post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to [his] separation from service) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion that there is post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute [his] misconduct to PTSD or another mental health condition, other than personality disorder."

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 NJP and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct, the brevity of your service during which you committed these offenses, and the fact it involved a drug offense. The Board determined that illegal drug possession 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 also considered the likely negative effect your misconduct had on the good order and discipline of your command. Further, the Board concurred with the AO that, while there is post-service evidence of a diagnosis of PTSD that may be attributed to military service, there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition, other than personality disorder. As the AO explained, you were appropriately referred for psychological evaluation during your enlistment and properly evaluated. Additionally, the available records are not sufficiently detailed to provide a nexus with your misconduct, which appears consistent with your identified characterological difficulties. Finally, the Board determined your treatment concerning PTSD from civilian providers are too temporally remote from your military service. 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. The Board found that your misconduct was intentional and made you unsuitable for continued naval service.

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 commends your post-discharge accomplishments and 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,

1/10/2025

