



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

██████████  
Docket No. 6141-24

Ref: Signature Date

████████████████████  
██████████████████  
██████████████████

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 your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 18 November 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 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an advisory opinion (AO). Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the Navy and began a period of active duty on 30 May 2000. On 21 January 2001, while you were a student at ██████████, you received a civilian conviction for driving under the influence (DUI). Between 20 May 2003 and 19 December 2003, you received three nonjudicial punishments (NJPs) for failure to obey order or regulation, drunk or reckless operation of vehicle, insubordinate conduct, provoking speeches, gestures, and misbehavior of a sentinel or outlook. On 7 November 2003, you were arrested by civilian authorities due to suspected DUI and had a pending court hearing. Consequently, you were notified of your pending administrative processing by reason of pattern of misconduct (POM), at which time you waived your right to consult with counsel and to have your case heard before an administrative discharge board. Based on comments in your

commanding officer's recommendation, you received treatment at the █ Substance Abuse Rehabilitation Program. Subsequently, the separation authority directed you be discharged with a General (Under Honorable Conditions) (GEN) characterization of service and, on 17 February 2004, you were so discharged.

Post discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request, on 6 November 2018, after determining your discharge was proper as issued.

The Board carefully considered all potentially mitigating factors to determine whether the interest 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 your contentions that you incurred PTSD and other mental health concerns during military service. Specifically, you claim to have developed Major Depressive Disorder during Operation Enduring Freedom, after experiencing harassment and hazing by your command, and infidelity and betrayal by your wife and friend. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

Based on your assertions that you incurred mental health concerns during military service, which might have mitigated your discharge characterization of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO on 1 October 2024. The AO stated in pertinent part:

Petitioner was appropriately referred and properly evaluated during his military service. His diagnosis of Alcohol Use Disorder was based on the information he chose to disclose, observation of his behavior, and a review of his military record. Temporally remote to his military service, the VA has granted service connection for a mental health condition. There is insufficient evidence of a diagnosis of PTSD. Unfortunately, available records do not establish a nexus with his misconduct, as there is insufficient evidence to attribute his misconduct to another mental health condition other than Alcohol Use Disorder. More weight has been given to the service record over the post-service clinical opinion. 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 that there is post-service evidence from the VA of a mental health condition that may be attributed to military service. There is insufficient evidence of a diagnosis of PTSD. There is insufficient evidence to attribute his misconduct to a mental health condition, other than Alcohol Use Disorder."

After a thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJPs and civilian convictions, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard for military authorities and regulations. Additionally, the Board noted you were provided an opportunity to correct your conduct deficiencies during your service; however,

you continued to commit additional misconduct that led to your discharge. Further, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD and insufficient evidence to attribute your misconduct to a mental health condition, other than Alcohol Use Disorder. As explained in the AO, the VA has granted service connection for a mental health condition that is temporally remote to your military service and more weight was given to your service record. The Board also considered the likely negative discrediting effect your civilian conviction(s) had on the Navy. Lastly, the Board determined that an Honorable discharge was appropriate only if the member's service was otherwise so meritorious that any other characterization of service would clearly be inappropriate. The Board concluded by opining that certain negative aspects of your conduct and/or performance outweighed the positive aspects of your military record even under liberal consideration standards for mental health conditions, and that your current General (Under Honorable Conditions) discharge characterization and no higher was appropriate. Therefore, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service.

Therefore, 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. 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,

12/16/2024

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Executive Director

Signed by: █