



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

Docket No. 6212-24

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 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 9 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 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 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, dated 25 October 2024. 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 30 March 1990. Upon your enlistment, you admitted preservice use of marijuana and cocaine, and an arrest for disorderly conduct. On 17 June 1990, you began a period of unauthorized absence (UA) which lasted 7 hours. On 28 June 1990, you received nonjudicial punishment (NJP) for a period of UA, disrespectful in language, failure to obey a lawful order, and dereliction of duty. Consequently, you were counseled concerning your previous NJP violations and advised that failure to take corrective action could result in administrative separation. On 2 July 1990, you began a second

period of UA which lasted 3 hours, and 40 minutes. On 10 July 1990, you received a second NJP for a period of UA and failure to obey a lawful order. Consequently, you were counseled concerning your previous NJP violations and advised that failure to take corrective action could result in administrative separation.

On 23 September 1990, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct and commission of a serious offense. On 11 January 1991, you received a third NJP for a period of UA from appointed place of duty. On 6 May 1991, you decided to waive your procedural rights. On 7 May 1991, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service and commented that you “have been afforded every opportunity to capitalize and has failed to do so. His behavior and performance has been dishonorable and his discharge should be characterized accordingly. On 16 May 1991, you received a fourth NJP for a period of UA and wrongful use of a controlled substance. On 25 June 1991, the separation authority approved and ordered an OTH discharge characterization by reason of misconduct due to pattern of misconduct. On 28 June 1991, you were so discharged.

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 for a discharge upgrade and contentions that: (a) you are in need of a discharge upgrade so that you may be able to go to the doctor and receive treatment for a service connected injury, (b) there were numerous errors made during your discharge from service, (c) you were sent to combat without proper procedures, and (d) the allegations and accusations against you were false. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board’s review, the Board considered the AO. The AO stated in pertinent part:

Petitioner was evaluated during military service and diagnosed with a substance use disorder. Substance use is incompatible with military readiness and discipline and does not remove responsibility for behavior. There is no evidence that he was diagnosed with another mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given pre-service behavior that appears to have continued. 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 insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board agreed with your CO that you were given multiple opportunities to correct your conduct deficiencies but continued to commit misconduct. Your conduct not only showed a pattern of misconduct but was sufficiently serious to negatively affect the good order and discipline of your command. Further, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD. As explained in the AO, you provided no medical evidence in support of your claims. 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 observed that you provided no evidence, other than your statement, to substantiate your contentions that errors were committed in your treatment, punishment, and processing for administrative separation. Therefore, the Board was not persuaded by your arguments and determined the presumption of regularity applied in your case.

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. 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 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,

1/7/2025

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Executive Director

Signed by: █