



**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. 6436-24  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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.

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 6 December 2024, 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 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 to 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) of a qualified mental health provider and your response to the AO.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You previously applied to this Board for a discharge upgrade and were denied on 26 January 2024. The summary of your service remains substantially unchanged.

You initially appeared, with representative counsel, before the Naval Discharge Review Board (NDRB) contending that your disciplinary proceedings were improper, that your waiver of your administrative board hearing was falsely induced, that your type of discharge was not equitable, and that the delay in processing your separation was an abuse of command responsibility. The NDRB considered your request on 14 April 1992 and denied it after determining that your discharge was proper as issued.

Recently, you applied to this Board contending that you suffered from post-traumatic stress disorder (PTSD) following a life-threatening boiler incident aboard your ship during which, according to a supporting witness statement, you had to be rescued after you were almost overcome by steam during your efforts to prevent a catastrophic boiler malfunction. Following this event, you attribute a decline in performance to symptoms of PTSD and you state that you also began self-medicating through substance abuse. You believe it was an error that your discharge did not consider your PTSD as a mitigating factor for your misconduct. You also submitted evidence in the form of character letters addressing the quality of your post-discharge employment in continuing to support boiler maintenance for military installations and your undergraduate degree.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie, Kurta, and Hagel Memos. These included, but were not limited to, your continued desire to upgrade your discharge and change your narrative reason for separation, separation code, separation authority, and reentry code. Your contentions remain substantially unchanged from those presented in your previous application with the addition of new evidence, to include a recent psychological review of your contended mental health conditions and PTSD conditions. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

Because you primarily contend that PTSD or another mental health condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His in-service alcohol and substance use disorder diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed by the mental health clinicians.

In some considerations of the case, the Petitioner's pre-service and in-service alcohol-related incidents prior to the steam leaks have been minimized, with an emphasis on problematic alcohol and substance use following the traumatic precipitants. However, there are inconsistencies in his record that raise concern regarding the Petitioner's candor. For example, in his 2024 mental health evaluation, the Petitioner reportedly "said he never got into trouble for anything related to alcohol until...1989." However, his service medical record indicates that he had two DUIs prior to the traumatic precipitants of 1988.

The Petitioner entered the Navy with a waiver for service for his DUI and pre-service marijuana use. However, simply because he obtained a waiver, it does not

mean that he did not have problematic alcohol use prior to service. Rather, the waiver means that the Petitioner “must have displayed sufficient mitigating circumstances that clearly justify waiver consideration” (Federal Register, Vol. 80, No. 59, 16271, 66.3, Definitions). In this opinion, more weight has been given to the pre-service problematic alcohol use behavior of DUI over recruitment considerations of mitigating circumstances that resulted in the Petitioner’s receipt of an enlistment waiver.

More emphasis has been placed on the Petitioner’s in-service attribution that his methamphetamine use was for weight loss than his current statement that his substance use was related to self-medication of undiagnosed trauma symptoms. Although the Petitioner reported that he did not disclose mental health symptoms in service “for fear of the impact on his career,” this is a confusing and contradictory statement. The Petitioner also stated that he sought separation from service as a way to avoid a return to the ship and that “his only option” was as a substance use treatment failure.

Temporally remote to his military service, mental health clinicians affiliated with the military in active or reserve capacity have determined that the Petitioner meets the criteria for PTSD attributed to his shipboard experiences. It is plausible that the Petitioner may have increased his alcohol consumption or returned to pre-service usage levels following the purported traumatic incidents. However, it is difficult to attribute his misconduct solely to his shipboard experiences, particularly given the extended period of time post-service in which the Petitioner did not experience symptoms sufficiently interfering as to seek treatment. Additionally, it is confusing that his treatment ended in 2020 with all goals being met, and yet he currently reportedly meets criteria for PTSD.

The AO concluded, “it is my clinical opinion that there is some post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct solely to PTSD.”

In response to the AO, you provided additional evidence in support of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

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 the fact it included a drug offense. 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. Further, the Board observed that you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your OTH discharge<sup>1</sup>. Additionally, the Board concurred with the clinical conclusion that, although there is some post-service evidence of a diagnosis of PTSD that may be attributed to military service, there is insufficient evidence to attribute your misconduct solely to PTSD. Most significantly,

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<sup>1</sup> The Board also observed that you were provided residential substance abuse rehabilitation treatment.

the Board was persuaded that your contemporaneous attribution of your drug abuse to weight loss was more probable than your current claim that you were self-medicating your PTSD symptoms. 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. The Board found that your conduct not only showed a pattern of misconduct but was sufficiently serious to negatively affect the good order and discipline of your command.

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 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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

1/8/2025

[REDACTED]

Executive Director

Signed by: [REDACTED]