



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

701 S. COURTHOUSE ROAD, SUITE 1001

ARLINGTON, VA 22204-2490

Docket No. 6521-24
Ref: Signature Date

Ref: Signature Date

Dear |

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 4 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 1 October 1987. On 28 April 1988, you received non-judicial punishment (NJP) for a period of unauthorized absence (UA) totaling six days. On 22 June 1988, you received your second NJP for a period of UA totaling 27 days. On 31 August 1988, you received your third NJP for a period of UA totaling two days and wrongful use of cocaine. On 20 September 1988, you received your fourth NJP for UA. On 21 September 1988, you were issued an administrative remarks (Page 13) counseling concerning your repeated unauthorized absences. The Page 13 expressly advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation from the naval service.

On 4 October 1988, you received your fifth NJP for absence from your appointed place of duty. On 21 November 1988, you were issued a Page 13 counseling concerning your periods of UA and drug abuse. On 16 March 1988, you received your sixth NJP for absence from your appointed place of duty. On 14 August 1989, you were convicted by a summary court-martial (SCM) of a period of UA totaling 27 days and missing ship's movement.

Consequently, you were notified that you were being recommended for administrative discharge from the Navy by reason of misconduct due to pattern of misconduct, commission of a serious offense, and drug abuse. You waived your right to consult with counsel and to 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 approved the recommendation and you were so discharged on 30 September 1989 for pattern of misconduct.

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 contentions that: (1) you used drugs on a single occasion while “attempting to cope with the mistreatment and discrimination” you experienced in service, (2) you incurred post-traumatic stress disorder (PTSD) while serving onboard the ■ following the incident involving the turret explosion and assisting in the aftermath cleanup of lost personnel, and (3) you were given a choice to stay in the Navy or to be discharged and chose to be discharged, and (4) when making this choice you were disoriented, sleep deprived, and suffering from severe nightmares. For purposes of clemency and equity consideration, the Board considered your statements 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 7 October 2024. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. 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. 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. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition.”

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 NJPs and SCM conviction, outweighed these 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 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 concurred with the AO that there is

insufficient evidence of a diagnosis of PTSD or another mental health condition, and there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As the AO explained, your personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct and there is no evidence that you were diagnosed with a mental health condition while in military service, or that you exhibited any symptoms of a mental health condition. 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 and were properly discharged based on your misconduct. Furthermore, the Board noted that you were provided multiple opportunities to correct your conduct deficiencies during your service; however, you continued to commit additional misconduct. Finally, there is no precedent within this Board's review, for minimizing a one-time incident. As with each case before the Board, the seriousness of a single act must be judged on its own merit, it can neither be excused nor extenuated solely on its isolation. Regardless, the Board observed that you provided no evidence, other than your statement, to substantiate your contentions regarding your misconduct or administrative separation process. Therefore, the Board was not persuaded by your mitigation arguments.

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 your statement and the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, 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,

1/6/2025

