



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

██████████
Docket No. 6759-24
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 limitations 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 8 January 2025. 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)/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 an advisory opinion (AO) from a qualified mental health professional, dated 17 October 2024, and your rebuttal to the AO.

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

You enlisted in the Navy and commenced a period of active duty on 12 August 1980. Prior to enlisting, you received an enlistment waiver for pre-service marijuana use. On 17 December 1980, you received non-judicial punishment (NJP) for possession of marijuana. On 22 February 1983, you received NJP for a period of UA totaling four hours. On 25 October 1983, you received NJP for drunk and disorderly conduct and assault. On 3 November 1983, you received an Alcohol Dependency Evaluation and were diagnosed with alcohol dependency and poly drug abuse in remission. You were referred to the Naval Alcohol Rehabilitation Center for treatment. On 14 December 1983, you completed treatment for alcoholism and was directed to participate

in a six-month aftercare program. On 19 June 1984, you were formerly counseled on your unsatisfactory military behavior on and off duty. On 2 July 1984, you received NJP for attempting to steal \$10 worth of gasoline from the US Government. On 9 August 1984, you received a medical evaluation that noted you failed your alcohol rehabilitation treatment due to being charged with driving under the influence (DUI). On 5 October 1984, civil authorities convicted you of DUI. On 13 November 1984, a special court-martial (SPCM) convicted you of disobeying a lawful order, two specifications of disrespectful in language toward a petty officer, operating a vehicle in a wanton manner, wrongful use of marijuana, assault with means to produce bodily harm, assault on a petty officer, drunk and disorderly conduct, and two specifications of communicating a threat. As a result, you were sentenced to confinement for four months, reduction to E-1, and a Bad Conduct Discharge (BCD). After completion of all levels of review, you were so discharged on 27 January 1986.

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, reinstate your rate to E-5, and receive back pay. You content that you incurred mental health concerns (PTSD) due to an alcohol use disorder resulting from contracting an incurable Sexual Transmitted Infection (STI) while in service. You also assert you begin to drink heavily after learning you contracted the incurable STI and you did not receive proper help for your mental health condition. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO. The mental health professional stated in pertinent part:

That Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated and treated. His alcohol use disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. There is no evidence of another mental health condition, and the Petitioner has provided no additional medical evidence. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms of another mental health concern in service or provide a nexus with his misconduct, particularly given pre-service substance use behavior that appears to have continued in service. 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 that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition, other than alcohol use disorder." In response to the AO, you submitted a personal statement that provided additional information regarding the circumstances 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 your misconduct, as evidenced by your NJPs, civil conviction, and SPCM, outweighed the potential 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 to attribute your misconduct to PTSD or another mental health condition, other than alcohol use disorder. As explained in the AO, there is no evidence of another mental health condition, you failed to provide additional medical evidence, and available records are not sufficiently detailed to establish clinical symptoms of another mental health concern in service or provide a nexus with your misconduct. 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. Additionally, 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 BCD. Your conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of your command. Finally, the Board noted that you provided no evidence, other than your statements, to substantiate your contentions.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD¹. 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 mitigated 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,

1/20/2025


¹ Based on this finding, the Board also concluded there was insufficient evidence to grant your other requests.