



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

██████████
Docket No. 7437-24

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.

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 31 January 2025, 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 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 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider. Although you were provided an opportunity to respond to the AO, you chose not to do so.

On 22 April 2019, this Board denied your initial petition for a discharge upgrade. You did not proffer any mental health contentions with your first petition. On 29 January 2021, this Board again denied your petition for relief. In your second petition, however, you proffered certain mental health contentions to include PTSD and suffering a traumatic brain injury. On 9 February 2024, this Board denied your third petition for relief. The facts of your case remain substantially unchanged.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that: (a) your mental health diagnosis of major depressive disorder which has been determined by the VA, you believe shows in totality the negative effects your mental illness has contributed to the ordeal surrounding your bad conduct discharge, (b) you are sorry for all your involvement with this case, and you have genuinely and wholeheartedly apologized to your spouse for taking her through everything that had occurred during this period of your life and your marriage, and you take full responsibility, (c) you can truly admit and accept that at that time you were not in a positive mental capacity and you felt it was after what you experienced during your last deployment, (d) the Marine Corps was all you knew and due to your inability to adjust back in the States after your first 13-month deployment, you made a second attempt to deploy to what you felt was familiar, (e) you started drinking excessively as a coping means, and the verbal altercations between your spouse and you started to increase, (f) the VA decision on 06/06/2024 has finally given you clarity that you had been suffering and battling with a newly developed mental illness following your deployment, and you can honestly can say that you became a person you didn't recognize or understand when you returned home, (g) for three years you were spiraling out of control, and (h) you are requesting a discharge upgrade so that you may continue to seek further assistance with my traumatic brain injury and other medical conditions (knees) that you suffered in both February and November of 2016 as a result of two failed suicide attempts. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO dated 15 December 2024. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner submitted VA compensation and pension rating noting 30% service-connection for Major Depressive Disorder. He submitted a letter from a Disability Claims Advocate noting his appeal for benefits, Disability Benefits Questionnaire (DBQ) dated February 2021 noting diagnoses of PTSD, Alcohol Use Disorder, and Depressive Disorder due to medical condition.

There is no evidence that the Petitioner was diagnosed with a mental health condition during his military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a 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 or provide a nexus with his requested change for narrative reason for separation.

The AO concluded, "it is my clinical opinion that there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave

liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your misconduct and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the serious misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Moreover, the Board concluded that your very serious domestic violence offense partially forming the underlying basis of your Bad Conduct Discharge (BCD) was not the type of misconduct that would be excused or mitigated by any mental health conditions even with liberal consideration. Even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your cumulative misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also 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 noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations are not binding on the Department of the Navy and have no bearing on previous active duty service discharge characterizations.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this was not a case warranting any clemency as you were properly convicted at a general court martial of serious misconduct involving domestic violence. The Board determined that characterization with a Dishonorable Discharge or BCD appropriate when the basis for discharge is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. Moreover, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. 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
