



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. 7483-24
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.

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 6 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 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 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO). Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

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 on the evidence of record.

During your enlistment processing you were granted an enlistment waiver for marijuana use. You enlisted in the Marine Corps and began a period of active duty on 1 April 1986. On

29 August 1986, you received nonjudicial punishment (NJP) for being absent from your appointed place of duty and were awarded restriction for 14 days, extra duty for 14 days, and forfeiture of \$161.00 pay per month for one month. Your forfeiture of pay was suspended for a period of four months. On 18 September 1986, you received a second NJP for the wrongful use of amphetamines. As a result of your continued misconduct, your suspended forfeiture was vacated. On 9 October 1986, you received a third NJP for a 4-day period of unauthorized absence. On 12 October 1990, a summary court-martial (SCM) found you guilty of the wrongful use of a controlled substance. The court sentenced you to thirty days of confinement, forfeiture of \$477.00 pay per month for one month, and reduction in rank to E-1. On 29 October 1990, you were diagnosed as Substance Dependent. Subsequently, you were notified of your pending administrative processing by reason of pattern of misconduct (POM) and drug abuse; at which time you elected your right to consult with counsel and waived your right to present your case to an administrative discharge board. Based on comments in your commanding officer's recommendation, you also received Level III Residential Treatment at ██████████. Ultimately, the separation authority directed you be discharged with an Other Than Honorable (OTH) characterization of service by reason of POM and drug abuse and you were so discharged on 28 January 1991.

The Board carefully considered all potentially mitigating factors to determine whether the interest 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 and your contentions that: (1) you faced a difficult choice between cooperating as an informant or being separated from service, (2) your addiction, which began during your time in service and persisted for 15 years after your separation, severely limited your ability to seek help from the Department of Veterans Affairs (VA), and (3) in hindsight, you believe you should never have been placed in a position where you were expected to report on fellow service members. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

Based on your assertions that you incurred Post Traumatic Stress Disorder during military service, which may have contributed to the circumstances of your discharge, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO on 12 November 2024. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during her enlistment and properly evaluated, including during inpatient treatment. Her substance use disorder diagnosis were based on observed behaviors and performance during her period of service, the information she chose to disclose, and the psychological evaluation performed by the mental health clinician. Temporally remote to her military service, she has received a diagnosis of PTSD from a civilian provider that is attributed to experiences during her service. However, it is difficult to attribute her misconduct to mental health concerns incurred during military service, given pre-service 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 her misconduct) may aid in rendering an alternate opinion.

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

After a 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 and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it included 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. Additionally, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to PTSD. As explained in the AO, it is difficult to attribute your misconduct to mental health concerns incurred during service, given pre-service behavior that appears to have continued in service. 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 determined that an Honorable discharge is warranted only if a member’s service is so meritorious that any other characterization of service would be clearly inappropriate.

As a result, the Board concluded that the negative aspects of your conduct and/or performance outweighed the positive aspects of your military record, even under liberal consideration standards for mental health conditions, and determined your discharge was proper and equitable under applicable standards of law and discipline, and it accurately reflects your conduct during your period of service. While the Board carefully considered the evidence you submitted in mitigation and commends your post-service rehabilitation efforts, 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 is attached 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,

1/23/2025

