



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. 7873-24
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 Board waived the statute of limitation 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 14 February 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 to 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) of a qualified mental health provider and your response to the AO.

You enlisted in the Marine Corps and began a period of active duty on 3 July 1996. On 30 April 1997, you were administratively counseled for consuming alcohol under the age of 21. On 27 October 1997, you were subject to your first nonjudicial punishment (NJP) for a violation of the Uniform Code of Military Justice (UCMJ) under Article 92 for violation of a school order by consuming alcohol under the legal age; for which you received an additional administrative counseling advising you that continued misconduct could result in your administrative discharge. You were then issued another counseling warning, on 18 December 1997, for failure to conduct

yourself in a professional manner due to repeated unauthorized absences (UAs) and for willfully disobeying an order given to you by two superiors. On 25 June 1998, you were subject to a second NJP for a violation of Article 112a of the Uniform Code of Military Justice based on a positive urinalysis indicating marijuana use. Consequently, you were notified of processing for administrative separation by reason of misconduct due to drug abuse and requested a hearing before an administrative separation board. On 1 December 1998, your administrative separation board convened and substantiated your drug abuse. The members recommended that you should be separated with an Other Than Honorable (OTH) conditions characterization of service but also recommended that your discharge be suspended. Your commanding officer's recommendation concurred with the OTH characterization but did not concur with the recommendation that your separation should be suspended. The Commanding General agreed, and you were so discharged on 15 January 1999.

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 desire to upgrade your discharge to "Honorable" and your contentions that you were traumatized by your experience of severe and unsafe conditions during boot camp, you attribute your disciplinary issues to having developed a drinking problem as a coping mechanism, and assert that you were not afforded substance abuse counseling until your positive urinalysis; in spite of multiple underage drinking incidents. In the years since your discharge, you have finally achieved sobriety, with your alcohol use disorder in remission for the past 5 years, and you submit evidence of your post-service accomplishments in education and volunteer work via a personal affidavit. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

Because you contend that post-traumatic stress disorder (PTSD) or another mental health condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

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 one post-service letter from a psychiatrist noting treatment for PTSD. Possibly, due to the passage of time, the Petitioner's account of symptoms due to a perceived trauma shifted, however there is no evidence contained within his record that suggests that he was suffering from PTSD during his misconduct. Additional records (e.g., active duty medical records, post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his separation) would aid in rendering an alternate opinion.

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."

In response to the AO, you provided additional evidence in support of your application. 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. The Board observed you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your OTH discharge. 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. Further, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service and insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, there is no evidence contained within your record that suggests that you were suffering from PTSD during 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.

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 and 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 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,

3/13/2025

