



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

██████████
Docket No. 7943-24
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 27 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, 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 the advisory opinion (AO) furnished by a qualified mental health professional, dated 25 November 2024, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 Reserves and began a period of active duty on 4 August 1988. Upon your enlistment, you admitted preservice use of a controlled substance-marijuana. On 24 June

1989, you were convicted by civil authorities for the charge of littering. Consequently, you pled guilty and were sentenced to one day, time served. On 13 July 1989, you received nonjudicial punishment (NJP) for two instances of unauthorized absence (UA). On 13 May 1991, you received a second NJP for wrongful use of a controlled substance-marijuana. Subsequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to drug abuse and misconduct due to commission of a serious offense.

On 20 May 1991, you were evaluated by a drug and alcohol dependency counselor who recommended that you were separated from service via a Veterans' Administration (VA) Hospital. On 21 May 1991, you were given the option to elect treatment at a VA Hospital and to accept a discharge in the most expeditious manner. You did not select treatment, only expeditious discharge. On the same date, you decided to waive your procedural rights. On 23 May 1991, your commanding officer recommended an Other Than Honorable (OTH) characterization of service by reason of misconduct due to drug abuse. On 14 June 1991, the separation authority directed your discharge and on 20 June 1991 you were so discharged.

On 7 December 2012, this Board denied your previous request for a discharge characterization upgrade based on your contentions of youth and your overall record of service.

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 for a discharge upgrade and contentions that: (a) you are a ██████████ veteran and your Certificate of Release or Discharge from Active Duty (DD Form 214) contains errors that need to be fixed, (b) these errors require corrections based on the fact that you were not granted counseling, or drug treatment rehabilitation before your discharge, (c) you were involved in an aircraft accident and no one asked you about your emotional condition, neither if you needed counseling, (d) you did not know where to go and seek help, (e) you were awarded the Purple Heart Medal for saving the plane, (f) you came home from war and began using drugs to cope with the aftermath symptoms of the plane accident, (g) you were placed in confinement to the barracks and your pay was cut off in half, (h) you began experiencing depression, stress, having emotion, and anxiety as a result of being in confinement, (i) you were more depressed since you had a family to support while your pay was cut. For purposes of clemency and equity consideration, the Board noted you provided copies of your personal statement, VA Claim Results, and a VA Decision Document.

As part of the Board's review, the Board considered the AO. 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. He has provided no medical evidence to support his claims. Unfortunately, available records are not sufficiently detailed to establish 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 that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition.”

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. Additionally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. As explained in the AO, you provided no medical evidence of PTSD, and your personal statement is not sufficiently detailed to provide a nexus with your misconduct.

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 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 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,

3/6/2025

