



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

██████████
Docket No. 8096-24
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 3 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, 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 27 November 2024. 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 Marine Corps and began a period of active duty on 2 November 2024. Upon your enlistment, you received waiver for Attention Deficit Disorder, and Depression, and

preservice drug abuse. On 23 March 2005, you were counseled concerning substandard performance, specifically failing to display an acceptable level of responsibility, judgement, maturity and dependability. You were advised that failure to take corrective action could result in administrative separation. Between 7 December 2005 and 11 March 2006, you were deployed in support of Operation Iraq Freedom. On 16 March 2006, you were convicted by summary court martial (SCM) for wrongful possession and distribution of a controlled substance-Diazepam while posted as a sentinel in Iraq. You were sentenced to reduction in rank, restriction, and forfeiture of pay.

On 1 August 2006, you received nonjudicial punishment (NJP) for failure to obey a lawful order and making a false official statement. On 16 October 2006, you were counseled concerning your recent SCM conviction and advised that you were being processed for administrative separation by reason of misconduct due to drug abuse. Upon notification that you were being processed for misconduct due to pattern of misconduct and drug abuse, you decided to waive your procedural rights. On 26 October 2006, you were diagnosed as alcohol dependent.

Subsequently, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service. The separation authority approved the recommendation; however, on 3 January 2007, you signed a corrected acknowledgment of rights reflecting your request to consult with counsel and a case hearing by an administrative discharge board (ADB).

On 17 January 2007, your defense counsel requested a conditional waiver discharge board as a result of previous irregularities with your administrative separation documents. On 21 February 2007, the commanding general disapproved the conditional waiver request and ordered an ADB hearing. On 28 February 2007, the ADB determined that you committed misconduct due to both basis and recommended your separation with an OTH characterization of service. Subsequently, your commanding officer again recommended an OTH characterization; which was approved by the separation authority. On 3 April 2007, you were so discharged.

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 went years without seeking help and decided to self-medicate with alcohol, (b) your PTSD cause you to make poor choices which led you to an early discharge from the Marine Corps, (c) you experienced hazing and mistreatment from a senior Marine, (d) things began going terribly wrong for you after you were deployed to the ██████████ province during the winter of 2005-2006, (e) you were forced to watch uncensored executions and beheadings performed by the enemy, (f) you experienced trauma when learning that your good friend was killed during an explosion at ██████████, (g) you returned home and found yourself with a severe drinking problem, (h) your childhood psychologist diagnosed you with combat-related PTSD, (i) you were able to stop drinking and have been sober for almost three-years, (j) you are seeking a discharge upgrade with the intent to receive financial, medical, and psychological assistance. For purposes of clemency and equity consideration, the Board noted you did provide copies of four advocacy letters, Department of Veterans Affairs decision document, and your personal statement.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated on multiple occasions during his enlistment. 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. Temporally remote to his military service, the VA has granted service connection for PTSD and a civilian provider has expressed the opinion that the Petitioner's problematic alcohol use in service was due to self-medication for PTSD symptoms. However, more weight has been given to in-service evaluations providing no evidence of another mental health condition other than alcohol use disorder. Additionally, more weight has been placed on the in-service determination that his substance-related misconduct is not attributed to combat. 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 post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or a mental health condition, other than alcohol use disorder."

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 NJP and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included drug related offenses. The Board determined that illegal drug use and distribution 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 also took into consideration that your illegal drug activity took place in a combat area while you were on sentinel duty. Additionally, the Board noted that your drug misconduct occurred prior to your abuse of alcohol since consumption of alcohol by active duty personnel was prohibited in Iraq. Further, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to PTSD or a mental health condition, other than alcohol use disorder. 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, 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 and discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation and commends you on your recent sobriety, 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 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,

3/4/2025

