



Docket No. 8432-24
Ref: Signature Date

Dear |

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.

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 15 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 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 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) furnished by a qualified mental health professional. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Marine Corps and began a period of active duty on 28 June 1999. Your record indicates you participated in combat operations with the [REDACTED] from May 2001 to June 2001. You completed this period of enlistment with an Honorable characterization of service¹ and immediately reenlisted on 10 January 2003. In September 2003

¹ In reviewing your record, the Board believes that you may be eligible for veterans' benefits which accrued during your prior period of Honorable service. However, your eligibility is a matter under the cognizance of the Department of Veterans Affairs (VA). In this regard, you should contact the nearest VA office concerning your rights, specifically, whether or not you are eligible for benefits based on your prior period of Honorable service.

and May 2004, during a physical examination you denied mental health symptoms. In August 2004, you were evaluated by a military psychologist and found fit for full duty. On 24 September 2004, you were convicted by a general court-martial (GCM) of indecent assault and wrongful distribution of ecstasy and marijuana. As punishment, you were sentenced to confinement, reduction in rank, and a Dishonorable Discharge (DD). Ultimately, the DD was approved at all levels of review and you were so discharged on 3 June 2008.

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 to upgrade your discharge character of service and change your narrative reason for separation, SPD Code, and separation authority to reflect a “Secretarial Authority” discharge. The Board considered your contentions that: (1) you incurred PTSD from multiple combat deployments during your service, which contributed to poor judgment, misconduct, and separation from service, (2) your untreated PTSD led to your consumption of alcohol and drug use, (3) while on deployments, you experienced the devastation of war, loss of friends, and witnessed Marines in pain from their injuries; these traumatic events left you mentally scared, (4) you express deep regret and shame for your past actions, (5) you have suffered through the shame, loss of employment opportunities, inconsistencies in your life and problems with interpersonal relationships, and (6) you have a family and works to better your community; your personal growth and development demonstrate your rehabilitation and offer the Board an opportunity to give you a second chance. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

As part of the Board’s review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 25 November 2024. 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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He was evaluated on multiple occasions during military service and denied mental health concerns at each evaluation. Temporally remote to his military service, he has received diagnoses of PTSD and other mental health concerns. 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 post-service evidence of diagnoses of PTSD and other mental health concerns. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition.”

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your

GCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved multiple drug offenses. The Board determined that illegal drug 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 considered the negative impact your conduct likely had on the good order and discipline of your command. Further, the Board concurred with the AO that, while there is post-service evidence of a diagnoses of PTSD and other mental health concerns, there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As the AO explained, the available records are not sufficiently detailed to establish a nexus with your misconduct and you were evaluated on multiple occasions during your military service and denied mental health concerns at each evaluation. The Board agreed there is no evidence that you were diagnosed with a mental health condition in military service or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Furthermore, the Board determined your diagnoses of PTSD and other mental health concerns are too temporally remote from your military service. Therefore, the Board determined that the record clearly reflected that your active-duty misconduct was willful and that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. The Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your DD.

Therefore, while the Board commends your post-discharge accomplishments and 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 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,

2/7/2025

