



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

Docket No. 8696-24
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 13 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 provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the Navy and commenced active duty on 25 February 1992. On 25 April 1992, you commenced a period of unauthorized absence (UA) that ended in your surrender on 5 May 1992. You joined your ship on 9 July 1992, and on 31 August 1992, you commenced a period of UA that ended with your apprehension by civil authorities on 10 December 1992. On 25 December 1992, you commenced a period of UA that ended in your surrender on 28 December 1992.

On 31 March 1993, you were found guilty at Special Court Martial (SPCM) of UA from

31 August 1992 to 9 December 1992 and wrongful use of methamphetamine. You were sentenced to reduction in rank to E-1, forfeitures, confinement, and a Bad Conduct Discharge (BCD). You commenced subsequently a period of UA from 10 April 1993 to 15 April 1993. Ultimately, the findings and sentence in your SPCM were affirmed and you were issued a BCD on 15 February 1994.

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 change your discharge characterization of service and your contentions that you were experiencing extreme emotional trauma caused by your duty assignment and tried to commit suicide while underway. For purposes of clemency and equity consideration, the Board considered the medical evidence dated 29 August 2024 but noted that you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 27 November 2024. The AO stated in pertinent part:

Petitioner contends he incurred mental health concerns during military service, which may have contributed to the circumstances of his discharge.

Petitioner provided an August 2024 report of a psychiatry follow-up appointment from a civilian provider noting a diagnosis of PTSD. The Petitioner was described as a male with no past psychiatric diagnosis who present [sic] for psychiatric assessment for PTSD symptoms. Patient reports he served in the military from 1992 to 1993 and participated in the Gulf War as a member of the Navy. Patient reports nightmares about buildings falling on him, sharks eating him alive and drowning in the ocean...[He reported he] attempted suicide while in the military...by cutting his wrist with a knife and was air lifted to a hospital in ■■■■■.

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. Temporally remote to military service, a civilian provider assigned a diagnosis of PTSD attributed to military service. Unfortunately, there is insufficient evidence to attribute his misconduct to a purported diagnosis of PTSD. Available records are very limited, and it is difficult to render an opinion without resorting to speculation.

The AO concluded, "it is my clinical opinion that there is some 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 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 that your misconduct, as evidenced by your SPCM, 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 also considered the likely negative impact your repeated misconduct, including extended UAs, had on the good order and discipline of your command. Additionally, the Board concurred with the AO and determined that, while there is some 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 your misconduct to PTSD or another mental health condition. As explained in the AO, the post-discharge diagnosis is temporally remote to your service and insufficient evidence to attribute your misconduct to a mental health condition. 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 concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. 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 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,

2/4/2025

