



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. 8729-24
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 7 February 2025, has carefully examined your current request. 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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 licensed clinical psychologist which was previously provided to you. You were afforded an opportunity to submit a rebuttal[, which was received and reviewed by the Board's mental health advisor to assess the extent to which, if any, impact it had on the original AO.

You previously applied to the Board last year and submitted evidence of the Department of Veterans Affairs (VA) diagnosis of your service-connected disability of post-traumatic stress disorder (PTSD) and clemency evidence in the form of advocacy letters. Your request was considered on 3 July 2023 and denied for the reasons addressed in the Board's decision. The

summary of your service remains substantially unchanged from that addressed in the Board's recent decision.

You now seek reconsideration of your request with supplemental supporting information. 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 and to change your narrative reason for separation to "Secretarial Authority" with a corresponding reentry code of "RE-1J." You contend that you are a sober man now who has turned your life around since the unfortunate events of your youth, your misconduct and behavior during your active duty service was aggravated by your experience of mental and physical traumas during your Gulf War-era service, these traumas resulted in post-traumatic stress syndrome (PTSD), and you were struggling with the stressful and adverse circumstances of your partner's infidelity. You believe your discharge warrants an upgrade on the basis of liberal consideration. In support of your request and for purposes of clemency and equity consideration, you submitted a personal statement in addition to a previous statement made to the VA, a statement from your spouse, your medical records for neurology concerns, a letter addressing a psychological evaluation, a review of your psychological records, PTSD awareness information from the VA, and VA records that included your disability benefits questionnaire, hearing records, rating decision, and character of discharge decisions.

Because you contend, in part, that PTSD or another mental health condition affected your discharge, the Board also considered the AO. It stated in pertinent part:

The Petitioner was evaluated in military service and diagnosed with an Alcohol Use Disorder, although he repeatedly denied experiencing mental health symptoms, including problematic alcohol use, upon evaluation in service.

Temporally remote to his service, the VA has granted service connection for PTSD. Other civilian psychologists have determined that his misconduct was related to PTSD symptoms experienced in service.

It is possible that his experiences while deployed and personal stressors following betrayal by his fiancé could have contributed to symptoms of PTSD. However, it is difficult to attribute his alcohol and substance use solely to PTSD, given pre-service behavior. While the Petitioner did not have a diagnosis of an alcohol or substance use behavior prior to military service, he did have problematic behavior that appears to have continued in service. More weight has been given to in-service denial of symptoms over report of symptoms temporally remote to military service.

The AO concluded, "it is my clinical opinion that there is post-service evidence from the VA and other providers of diagnoses of PTSD and other mental health concerns that may be attributed to military service. There is insufficient evidence to attribute his misconduct solely to PTSD or another mental health condition, other than alcohol use disorder.

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 NJP, 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. Further, the Board again concurred with the AO that, although there is post-service evidence from the VA and other providers of diagnoses of PTSD and other mental health concerns that may be attributed to military service, there is insufficient evidence to attribute your misconduct solely to PTSD or another mental health condition, other than alcohol use disorder. As explained in the AO, it is difficult to attribute your alcohol and substance use solely to PTSD; given your pre-service behavior. 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,

3/6/2025

