



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

██████████
Docket No. 9079-24
Ref: Signature Date

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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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. Your current request has been carefully examined by a three-member panel of the Board, sitting in executive session on 19 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, and applicable statutes, regulations, and policies, to include 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). In addition, the Board considered an advisory opinion (AO) from a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You previously applied to this Board for an upgrade to your characterization of service and were denied relief on 28 November 2017. The summary of your service remains substantially unchanged from that addressed in the Board's previous decision.

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 was not limited, your request to upgrade your characterization of

service, restore your benefits and medals, and receive accommodations and back pay due to wrongful and legal errors. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

As part of the Board review process, a licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO dated 3 January 2025. The Ph.D. stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. He was diagnosed with a substance use disorder. He was also diagnosed with an adjustment disorder, which was noted to have resolved. These diagnoses were 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, he has received other mental health diagnoses from a civilian provider that are attributed to his service. There is no evidence of treatment for complaints consistent with TBI in his service medical record and the Petitioner has provided no medical evidence to support his claims.

Unfortunately, there is insufficient evidence to attribute his in-service misconduct to a mental health condition other than substance use disorder, particularly given his pre-service substance use that continued in service. 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 Ph.D. concluded, "it is my clinical opinion that there is post-service evidence from a civilian provider of diagnoses of PTSD and other mental health conditions that may be attributed to military service. There is insufficient evidence of TBI. There is insufficient evidence to attribute his misconduct to PTSD, TBI, or another mental health condition, other than substance 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 three non-judicial punishments and general court-martial (GCM), outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included multiple drug 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 noted that marijuana use or possession in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Additionally, the Board found that your conduct showed a complete disregard for military authority and regulations. The Board observed you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct, which led to your BCD. Your conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of your command. Additionally, the

Board concurred with the AO and determined that there is insufficient evidence to attribute your misconduct to PTSD, TBI, or another mental health condition, other than substance use disorder. As explained in the AO, there is insufficient evidence to attribute your in-service misconduct to a mental health condition other than substance use disorder, particularly given your pre-service substance use that continued in service. The Board agreed that additional records describing your diagnosis, symptoms, and their specific link to your misconduct may aid in rendering an alternate opinion. 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, the Board noted you provided no evidence, other than your statement, to substantiate your contentions of legal error. The Board considered that your GCM conviction would have received multiple levels of review during which your assigned legal counsel would have had an opportunity to submit arguments regarding the existence of any legal errors with your case. However, your conviction and sentence were upheld after appellate review. Therefore, the Board determined the presumption of regularity applies in your case.

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 for your post-discharge rehabilitation, 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,

3/13/2025

