



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

Docket No. 9564-24
Ref: Signature Date

Dear Petitioner:

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 31 March 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.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues 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 Navy after disclosing pre-service marijuana use and commenced active duty on 19 September 1989. On 29 December 1990, you received non-judicial punishment (NJP) for failure to obey a lawful order. You were issued an administrative remarks (Page 13) counseling concerning deficiencies in your performance and/or conduct. You were advised that any further

deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 6 October 1991, you commenced a period of unauthorized absence (UA), during which you missed ship's movement, that ended in your apprehension on 16 October 1991. On 25 October 1991, you received NJP for the period of UA, six specifications of missing restricted muster, and missing ship's movement. On 19 November 1991, you received a medical evaluation where you expressed a desire to curb your drinking. The medical officer indicated you had several incidents of drug abuse after completion of Level III residential treatment. You were found alcohol and drug dependent and not recommended for further service.

On 27 November 1991, you commenced a period of UA that ended with your apprehension on 7 December 1991. On 19 December 1991, you received NJP for wrongful use of marijuana and breaking restriction. The same day, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to drug abuse, pattern of misconduct, and commission of a serious offense. You waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board. The separation authority directed your discharge with an OTH characterization of service and you were so discharged on 18 February 1992. Prior to your discharge, you were offered, and declined, drug and alcohol rehabilitation treatment.

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 characterization of service and contentions that your pre-service mental health issues were exacerbated by incidents during military service, your misconduct is mitigated by the extreme military fatigue these events caused, you struggled with new addictions and mental health issues post-service, you have been exploited by mental health agencies, you achieved sobriety through religion, and you desire benefits from the Department of Veterans Affairs (VA). You also contend that you "have 5 ribbons and 3 medals" that are erroneously missing from your DD Form 214. For purposes of clemency and equity consideration, the Board considered your statement, the advocacy letter, letters from a psychiatrist and Master in Social Work, associate's degrees, and training certificates you provided.

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 12 February 2025. The AO stated in pertinent part:

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

Petitioner submitted a letter from psychiatrist (■) dated September 2024 noting treatment for the past two years. He submitted a second letter (August 2024) from a MSW (Masters, Social Work) noting participation in therapy since May 2011. Additionally, he sent a letter from his mother, partial records, and post-service accomplishments in support of his claim.

There is no evidence that the Petitioner was diagnosed with a mental health condition (or TBI) while in military service, or that he exhibited any symptoms of a mental health condition. He submitted a letter from a psychiatrist noting treatment, however there is no treating diagnosis, or historical rationale for treatment noted. Additionally, he submitted a letter from a Masters in Social Work who noted an extensive history of therapy, however rationale for therapy is noted as, a “TBI, and childhood traumas worsened by military service.” His statement is not sufficiently detailed to provide a nexus with his misconduct.

The AO concluded, “it is my clinical opinion that there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a 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 NJPs, 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 observed you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your OTH discharge. 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 of a mental health condition that may be attributed to military service and insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, the medical evidence you provided offers no treating diagnosis or historical rationale for treatment. 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 for your post-discharge accomplishments, 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.

Regarding your contention that your DD Form 214 is missing five ribbons and three medals, the Board determined you have not yet exhausted your administrative remedies by requesting a

change to Navy Personnel Command (NPC). Therefore, the Board took no action with this aspect of your application. Please contact My Navy Career Center Customer Service at 1-833-330-6622 or through email at askmncc@navy.mil.

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,

4/15/2025

