



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. 9596-24
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 28 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 your response to the AO.

You previously applied to this Board for a discharge upgrade and other associated relief. Your request was denied on 22 December 2022¹. In relevant part, you previously contended that your guilty plea was defective in that it did not conform the guidance in the Military Judge's Benchbook, you were ordered to provide urine samples under a code or authority which prohibited the use of the results as evidence in your trial, the convening authority was supposed to remit your bad conduct discharge, your discharge was executed in error, you were deprived of

¹ However, the Board recommended approval of an unrelated award.

your right to participate in your appellate defense notwithstanding the power of attorney you granted to your appellate defense counsel, and a military judge alone would not have been allowed to sentence you to a punitive discharge under current rules. The summary of your active duty service and misconduct remains substantially unchanged from the previous Board 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 Wilkie, Kurta, and Hagel Memos. These included, but were not limited to, your desire to upgrade your discharge, and to change your reentry code to "RE-1," your narrative reason for separation to "Secretarial Authority" or medical retirement or separation, and to restore your rank. Your personal statement resubmitted with your application for reconsideration continues to raise your previous allegations regarding your trial proceedings; however, your attorney's brief in support of your current request focuses, instead, on your contention that you suffered from PTSD and mental health concerns during your military service; which you assert began shortly after you entered the fleet due to two violent hazing incidents, instilled intense fear in you, and triggered your purported PTSD. In support of your contentions of experiencing symptoms during your military service, you reference a health assessment conducted in March of 2002; in which you reported feelings of anxiety. Additionally:

(a) you claim that your unit had a reputation for having a rampant drug problem, and you believe there was a disparate response in your case to make an example of you;

(b) you were essentially forced to smoke marijuana by other Marines, whom you had observed selling "felony-level amounts" of drugs, because they threatened you with death;

(c) NCIS sought your help as an informant but you feared for your safety and submitted a request mast to the Inspector General which went unanswered;

(d) you believe reconsideration of your previously submitted clemency matters, weighed in conjunction with liberal consideration of your new mental health contentions, warrants consideration of an upgraded discharge characterization; and,

(e) you propose that the magistrate's decision to release you from pre-trial confinement should be considered favorably as evidence of your compliance with orders, your lack of being a flight risk, and the acknowledged unlikelihood that you would have continued committing serious misconduct.

In support of your contentions and for the purpose of clemency and equity consideration, you submitted several personal statements, service records and trial records, previously submitted clemency documents, and new 2025 medical records documenting your PTSD diagnosis and your substance use disorder.

Because you contend that post-traumatic stress disorder (PTSD) or another mental health condition affected your discharge, the Board also considered the review of a licensed clinical psychologist. The AO stated in pertinent part:

Petitioner claimed he incurred PTSD from a hazing incident during his military service. He contended his marijuana use was self-medication following the hazing.

He also stated, “I witnessed...Marines selling felony level amounts of marijuana to junior Marines. I was threatened by these Marines with death if I did not smoke marijuana with them.”

In his current statement, he noted the discrepancy with his report in the trial explaining, “I never purchased marijuana from another Marine. I never purchased or used marijuana from any civilian while at home on leave...The marijuana I smoked was never of my own free will... I did not want to mislead the court, but felt I was pressured into a version of events to preserve the PTA [pre-trial agreement].” He provided statements in support of his experience and evidence of character and post-service accomplishment.

Petitioner submitted January 2025 evidence of diagnoses of PTSD, Alcohol Dependence, and Cannabis Use Disorder.

Petitioner submitted an excerpted portion of a March 2002 health assessment, in which he endorsed “considerable stress at work and/or home...[and] family separation, family problems, and/or marital problems.”

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. Although he endorsed experiencing some stress in military service, there is no evidence that it was sufficiently distressing to lead him to seek treatment individually or from command referral.

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 his military service, he has received diagnoses of PTSD and other mental health concerns that appear unrelated to his service.

Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. Inconsistent statements regarding his substance use history raise concerns regarding his candor or the reliability of his recall over time.”

The Board concurred with the clinical opinion that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service, and there is insufficient evidence to attribute your drug abuse misconduct to PTSD or another mental health condition.

The AO concluded, “it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition.”

In response to the AO, you provided additional evidence in support of your case. 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 special court-martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included drug offenses. 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 noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. Further, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As explained in the AO, your PTSD diagnosis is temporally remote to your active duty service and appears unrelated. 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 found substantial reason to doubt your candor with respect to your contentions related to the circumstances of your drug use; given that you appear to adjust the facts related to your in-service experiences in the manner you seem to believe will be most beneficial dependent upon the claim you happen to be making at the time.

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 discharge². 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,

3/25/2025

² In making this finding, the Board also determined you do not merit a disability retirement or discharge and your rank and reentry codes remain appropriate.