



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

██████████
Docket No. 9756-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 10 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 and commenced active duty on 7 October 1987. Prior to enlisting, you signed the Navy Drug and Alcohol Abuse Statement of Understanding. After enlisting, your record reflects you were briefed on the Navy policy on drugs and alcohol. On 10 February 1988, you were assigned duty on board the ██████████. On 19 April 1989, the turret 2 explosion occurred.

On 23 May 1988, you received a civil conviction for urinating in public. You were sentenced to a \$25 fine plus court costs. On 22 November 1989, you received non-judicial punishment (NJP) for disorderly conduct/drunkenness. You were additionally issued an administrative remarks 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 7 March 1991, you received NJP for drug abuse – use of cocaine. Consequently, you were notified of pending administrative separation processing with an Other Than Honorable (OTH) discharge by reason of misconduct due to drug abuse. You waived all rights available to you but for the right to obtain copies of documents used in the separation process. While awaiting separation, you again received NJP for unauthorized absence (UA) on three occasions.

Following these occurrences, on 25 July 1991, your medical record indicates you were medically assessed and found not to be alcohol or drug dependent and did not require hospitalization or detoxification prior to separation. Your Commanding Officer (CO) recommended your separation for misconduct due to drug abuse with an OTH. The separation authority approved the recommendation and you were so discharged on 30 August 1991.

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 Memo. These included, but were not limited to, your desire to upgrade your discharge characterization of service and contentions that you had severe PTSD at the time of your discharge, you were a great naval Sailor and shipmate until the time of the ██████████ turret 2 explosion, you were in the forward AMR at the time of the explosion and directly under turret 2, your mental abilities and ability to function slowly deteriorated after the incident, and you still have recurring images and health problems. For purposes of clemency and equity consideration, the Board considered the materials you provided in support of your application, including your resume and service record documents.

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 22 January 2025. The AO stated in pertinent part:

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. He has provided no evidence of a diagnosis of a mental health condition. While his service record supports his claim that he was assigned to the ██████████ at the time of the turret explosion, it is difficult to attribute his misconduct to PTSD symptoms, given problematic behavior prior to the event. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus between his purported trauma and his misconduct. 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 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.”

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 and civil conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved 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 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 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 to attribute your misconduct to PTSD or another mental health condition. As explained in the AO, it is difficult to attribute your misconduct to PTSD symptoms, given your problematic behavior prior to the event. 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 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.

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,

3/31/2025

Executive Director

Signed by: