



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

██████████
Docket No. 9957-24
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 25 April 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider. 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 U.S. Navy and began a period of active duty service on or about 1 May 1989. Your pre-enlistment physical examination, on 24 January 1989, and self-reported medical history

both noted no psychiatric or neurologic issues, history, or symptoms. As part of your enlistment application, you disclosed pre-service marijuana use, a DUI conviction, and being cited for public intoxication and driving with a suspended license.

On 6 March 1990, your command issued you a "Page 13" retention/counseling warning (Page 13) documenting your unsatisfactory performance and/or conduct when you violated the Navy's posted ██████████ on 19 February 1990. The Page 13 advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation.

On 7 September 1990, you received non-judicial punishment (NJP) for the wrongful use of a controlled substance (amphetamine/methamphetamine). You did not appeal your NJP. On the same day, your command issued you a Page 13 noting that your recommendation for advancement in rate to paygrade E-4 was withdrawn due to your NJP for the use of a controlled substance.

On 3 October 1990, you commenced the Navy's Level III inpatient rehabilitation treatment program at ██████████ after being identified as drug/alcohol dependent and for having an eating disorder. On 13 November 1990, your command noted your completion of the rehabilitation program and warned you with a Page 13 entry that any involvement in a subsequent related incident or failure to satisfactorily complete any aspect of your Aftercare program will be grounds for administrative separation.

On 15 August 1991, you received NJP for an unauthorized absence (UA). You did not appeal your NJP. On 22 August 1991, your command issued you a Page 13 documenting your unsatisfactory performance and/or conduct as follows: your pattern of misconduct evidenced by your second receipt of CO's NJP. The Page 13 warned you any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for an administrative separation.

On 31 December 1991, your command issued you a Page 13 documenting your continued unsatisfactory performance when you failed to obey a lawful order from a First Class Petty Officer. The Page 13 advised you that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation.

On 21 March 1992, you received NJP for: (a) the wrongful use of a controlled substance, and (b) two (2) separate UA specifications. You did not appeal your NJP.

On 7 April 1992, you received NJP for four (4) separate UA specifications. You did not appeal your NJP.

Consequently, your command notified you of administrative separation proceedings by reason of misconduct due to a pattern of misconduct, alcohol abuse rehabilitation failure, and for failing to meet physical readiness standards due to obesity. You waived your rights to consult with counsel, submit statements, and to request a hearing before an administrative separation board.

In the interim, on 28 May 1992, you received NJP for the wrongful use of a controlled substance for the third time. You did not appeal your NJP. On 30 May 1992, you commenced a period of UA that terminated with your arrest by civilian authorities in ██████████ on 26 July 1992.

On 4 June 1992, your commanding officer (CO) had recommended to the Separation Authority (SA) that you receive an under other than honorable conditions (OTH) discharge characterization. Your CO stated, in part:

[Petitioner's] performance has been completely unsatisfactory. He has completed Level III of the residential program for alcohol, drug, and compulsive overeating rehabilitation on 14 Nov 90. He has been found guilty at Captain's Mast on five occasions, of which three were for wrongful use of a controlled substance. He has two page 13 entries in his service record counseling him on his misconduct. Although [Petitioner] completed the compulsive overeating rehabilitation program on 14 Nov 90, he has displayed no attempt at decreasing his percent of body fat and, in fact, has increased in weight as evidenced by his last Risk Factor Screening/Physical Readiness Test Results. [Petitioner] displays a poor attitude, demonstrates little initiative, continues to be a disruptive force to the maintenance of good order and discipline, and imposes an undue administrative burden on this command. His record of conduct reflects adversely upon ██████████ and the U.S. Navy. [Petitioner] is most strongly recommended for separation from the Naval Service with a discharge characterized as other than honorable.

The SA approved and directed your separation for misconduct with an OTH discharge characterization. Ultimately, on 27 July 1992, you were separated from the Navy for misconduct with an OTH discharge characterization and assigned an RE-4 reentry code.

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 for a discharge upgrade and contentions that: (a) you suffered from PTSD while serving in the US Navy on the ██████████ ██████████ during the ██████████ (b) to cope with the symptoms, you continued to drink and use drugs which resulted in being administratively discharged, (c) post-service you received treatment for your PTSD and substance use disorders and now have been clean and sober for twenty-three (23) years, (d) following treatment, you went back to school and earned a Master's Degree in Social Work and acquired a Certified Advanced Alcohol and Drug Counselor certificate in Michigan and have been helping others diagnosed with mental illness and co-occurring disorders for more than fifteen (15) years, and (e) you acquired PTSD while serving in the Navy, but did not recognize that your symptoms were a result of what happened while you were in the Navy until you went to treatment post-service. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records and issued an AO dated 27 January 2025. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner contends he incurred Post Traumatic Stress Disorder (PTSD) and other mental health concerns during military service, which may have contributed to the circumstances of his separation from service...The Petitioner contended he incurred PTSD and other mental health concerns during the first Gulf War, which contributed to problematic alcohol and substance use and his separation from service.

He had pre-service marijuana use and convictions for driving under the influence (DUI) and public intoxication, for which he was required to attend substance abuse meetings.

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 medical evidence to support his claims. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct.

The Ph.D. 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 these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence of any nexus between any purported mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your cumulative misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional, willful, and persistent, and demonstrated you were unfit for further service. The Board also 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.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor. The Board determined that illegal drug use by a Sailor is contrary

to Navy core values and policy, renders such service members unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors.

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 in 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,

5/8/2025

