



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

██████████
Docket No. 10074-24
Ref: Signature Date

████████████████████
████████████████
████████████████████████████████
████████████████████████████████
████████████████████

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.

Although you did not file your application in a timely manner, the Board waived the statute of limitation 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 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 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.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Marine Corps after receiving a waiver for pre-service drug abuse and began a period of active duty on 6 August 2005. You deployed to ██████████ from 21 August 2006 through 13 March 2007. Following identification of your in-service use of cocaine, you were screened in

March 2008 by the Substance Abuse Counseling Center (SACC); which recommended that you receive an evaluation for post-traumatic stress disorder (PTSD) due to your high score on the Combat Stress Checklist and an early intervention substance abuse program. Having negotiated for disposition at a lower forum, you were tried by Summary Court-Martial (SCM), on 28 March 2008, and convicted of a violation of Article 112a of the Uniform Code of Military Justice (UCMJ) due to wrongful use of the controlled substance, cocaine. You were subsequently processed for administrative separation by reason of misconduct due to drug abuse and, consistent with your disposition agreement, waived your right to a hearing before an administrative separation board. Your separation under Other Than Honorable conditions was approved and you were so discharged on 30 May 2008.

You requested review from the Naval Discharge Review Board (NDRB) and sought an upgrade of your discharge after contending that you experienced PTSD as a result of your exposure to combat-related trauma during your Iraq deployment. NDRB's medical board member advised that the NDRB that the record reasonably supported that PTSD existed during your service, that the condition was present at the time of your misconduct, and that it could be considered a mitigating factor with respect to your misconduct. Further, it was noted that it was unknown whether or not the required PTSD screening and medical evaluation was conducted prior to your separation; as had been advised by the SACC. The NDRB granted an upgrade of your discharge characterization to General (Under Honorable Conditions) after determining that, under application of liberal consideration, your service was honest and faithful, but that significant negative aspects of your conduct or performance of duty outweighed positive aspects, in light of the seriousness of your drug abuse misconduct.

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 to Honorable and to change your narrative reason for separation, separation code, and reentry code to reflect a Secretarial Authority discharge. You contended that you suffered from PTSD and depression during your military service; which warrants liberal consideration of your misconduct. Specifically, you claim that:

(1) you had turned to alcohol as a coping mechanism and were drinking heavily at the time of your Misconduct;

(2) your drug use was a one-time incident during a night of heavy drinking, and you are not a drug user or otherwise inclined to engage in the wrongful use of controlled substances;
- you made a mistake but believes your mental health condition significantly outweighs your one-time drug use;

(3) you ask for consideration of clemency based on your otherwise superlative conduct in uniform, with no page 11s or NJPs, to include that your commanding officer noted your outstanding service and mitigating factors during your separation proceedings; and,

(4) your post-service conduct in the years since your discharge warrants consideration of clemency.

For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted of your application and the NDRB decision, a compensation and pension letter from the Department of Veterans Affairs (VA) assessing a 70 percent service-connected disability for PTSD and Opioid Use Disorder and Cocaine Use Disorder, post-service medical notes for anxiety and PTSD, and a rejection letter from the NDRB regarding your request for an in-person hearing¹.

Because you contend that PTSD or another mental health condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any symptoms of a mental health condition. He provided post-service evidence of diagnoses of PTSD, however he did not submit any additional notes/records pertaining the rationale for or history of his diagnosed PTSD. His statement is not sufficiently detailed to provide a nexus with his misconduct. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion that there is sufficient evidence of a post-service diagnosis of PTSD. There is insufficient evidence to attribute his misconduct to a mental health condition."

In response to the AO, you provided additional evidence in support of your application. After reviewing your rebuttal evidence, the AO remained unchanged.

After thorough review, the Board concluded the potentially mitigating factors you submitted for consideration were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SCM, outweighed the mitigating factors you submitted for consideration. 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. Further, the Board found that your conduct showed a complete disregard for military authority and regulations.

Additionally, the Board concurred with the AO regarding the lack of evidence of a nexus between your wrongful use of cocaine and your PTSD. As explained in the AO, the post-service evidence of diagnoses of PTSD did not provide the rationale for or history of your diagnosed PTSD and, therefore, was insufficient to provide a nexus to your misconduct. 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.

¹ To the extent that you allege injustice in having requested an in-person hearing before the NDRB and been denied, you have requested the Board consider this alleged injustice in the context of its review of your request. In this regard, the Board noted that it considered your request de novo but found no injustice in denying your request for a personal appearance before this Board.

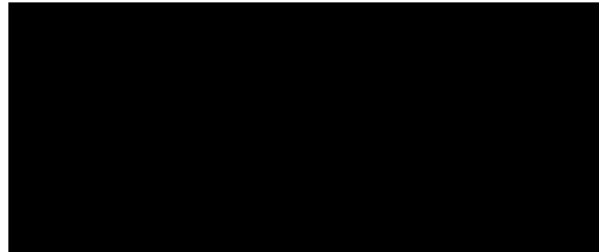
Regardless, even if the Board were to find that a nexus existed between your PTSD condition and your misconduct, the Board found that the relief recently granted by the NDRB has more than adequately accounted for the mitigating effect of your condition².

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, 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,

5/19/2025



² In making this finding, the Board determined the discharge characterization upgrade granted by the NDRB was sufficient mitigation to address any injustice in your record; including your assigned narrative reason for separation, separation code, and reentry code.