



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

██████████
Docket No. 10160-24
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.

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 21 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 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO). Although you were afforded an opportunity to submit a rebuttal, 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 on the evidence of record.

During your enlistment processing you disclosed marijuana use and were granted an enlistment waiver. On 5 June 2001, you signed the Marine Corps policy concerning the illegal use of drugs. You enlisted in the U.S. Marine Corps (USMC) and began a period of active duty on

5 November 2001. From May 2003 to August 2003, you were deployed to Iraq in support of Operation Iraqi Freedom. On 3 October 2003, you received nonjudicial punishment (NJP) for the wrongful use of methamphetamine. Following this, you were evaluated and diagnosed with Polysubstance Dependence. You were recommended for inpatient treatment; however, you formally refused to participate and did not make a statement. Subsequently, you were notified that you were being recommended for administrative discharge from the Marine Corps for drug abuse; at which time you elected your right to consult with counsel and waived your right to present your case to an administrative discharge board. Your Commanding Officer forwarded your administrative discharge package to the Separation Authority (SA) recommending you be discharged with an Other Than Honorable (OTH) characterization of service adding, "I have personally interviewed [Petitioner]. He admitted his guilt and initially expressed remorse for his actions and a desire to stay in the Marine Corps. However, less than one week after his non-judicial punishment for the drug use, he physically assaulted a fellow Marine and is currently in the MCB ██████████ brig pending a special court-martial. Additionally, he recently tested positive a second time for methamphetamine use. Therefore, although he did serve honorably during Operation IRAQI FREEDOM, in my opinion, [Petitioner] has no potential for service." On 14 November 2003, you were convicted by a Summary Court-Martial (SCM) of assault and wrongfully using methamphetamine. You were sentenced to forfeit two-thirds of your pay for one month and to be reduced in rank to E-1. Ultimately, the SA directed you be discharged with an OTH characterization of service and you were so discharged on 26 January 2004.

The Board carefully considered all potentially mitigating factors to determine whether the interest 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 and your contentions that: (1) your misconduct was the result of undiagnosed PTSD from combat in Iraq, (2) you self-medicated with drugs to cope, leading to your discharge, (3) post-discharge you have been diagnosed with PTSD and may have TBI, (4) you have shown commitment to recovery, completed rehabilitation in 2015, and have maintained sobriety, (5) you volunteer with ██████████, helping other veterans, (6) an upgrade would acknowledge your actions were influenced by service-related trauma, not character flaws, (7) would grant access to crucial Department of Veterans Affairs benefits for PTSD treatment and TBI testing, and (8) would support your continued recovery and positive contributions to society. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

Based on your assertions that you incurred Post Traumatic Stress Disorder (PTSD) and other mental health concerns during military service, which may have contributed to your separation from service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO on 14 February 2025. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His substance use disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinicians. He declined follow-up evaluation or treatment in service. Temporally remote to his military service, he has received treatment for

PTSD attributed to military combat exposure. There is insufficient evidence of TBI and the Petitioner has provided no medical evidence to support his claims. Unfortunately, there is insufficient information to attribute his misconduct to PTSD or another mental health condition, given pre-service substance use that appears to have continued in service. 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 post-service evidence from a veteran center of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence of TBI. There is insufficient evidence to attribute his misconduct to PTSD, TBI, or another mental health condition, other than substance use disorder."

After a thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJP and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that 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. 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 determined that an Honorable discharge was appropriate only if the member's service was otherwise so meritorious that any other characterization of service would be clearly inappropriate—a standard the Board found was not met in your case. Furthermore, 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. Lastly, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct solely to PTSD or another mental health condition, other than substance use disorder. As explained in the AO, your post-service diagnosis of PTSD is temporally remote to your military service and you provided no evidence of TBI. 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, 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,

4/29/2025

