



Docket No. 10167-24
Ref: Signature Date

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 4 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, 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)/mental health condition (MHC) (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). In addition, the Board considered an advisory opinion (AO) from a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the Marine Corps and began a period of active duty on 13 August 1999. On 27 July 2001, you received non-judicial punishment (NJP) for failure to obey regulations by possessing drug paraphernalia. On 4 January 2002, you signed a pre-trial agreement (PTA) waiving your right to an administrative separation board in exchange for having your pending court-martial charges referred to a lesser forum. On 31 January 2002, you received a summary court-martial (SCM) for wrongful possession of drug paraphernalia, wrongful use of methamphetamine, and smoking a controlled substance. Consequently, you were notified that

you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to drug abuse and you waived your right to present your case to an administrative discharge board in accordance with your pre-trial agreement. The commanding officer forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Marine Corps with an Other Than Honorable (OTH) characterization of service. The separation authority accepted the recommendation and you were so discharged on 30 March 2002.

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 to upgrade your discharge character of service and disability benefits for your hearing loss. You contend that, (1) you have demonstrated through your actions as a community leader that civic engagement and community development are high on your priority list, (2) you have continued to serve your country in more ways than one, and (3) the reason this is your first time doing this after 23 years is because you were embarrassed. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

Because you contend that post-traumatic stress disorder (PTSD) and a mental health condition impacted your misconduct, the Board 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 psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. The Petitioner indicated that he suffered from PTSD and depression while in service, however he did not submit any medical evidence in support of his claim. 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 insufficient evidence of a mental health condition that existed while in service. There is insufficient evidence to attribute his misconduct to a 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 NJP and SCM, 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. Further, the Board concluded your misconduct showed a complete disregard for military authority and regulations. The Board observed you were given an opportunity 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. Finally, the Board concurred with the AO that there is insufficient evidence that your

misconduct could be attributed to a mental health condition. As explained in the AO, there is no evidence that you were diagnosed with a mental health condition while in military service or that you exhibited any symptoms of a mental health condition. 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.

Regarding your request for disability benefits related to your hearing loss, the Board found no evidence to support your contention that you were unfit for continued naval service due to your hearing loss. The Board noted you provided no medical evidence in support of your claim and considered that you were not referred to a medical board for your condition. Therefore, the Board determined there was insufficient evidence to support a finding that you should have been processed through the disability evaluation system. Moreover, the Board noted that you were ineligible for military disability processing or benefits based on your misconduct based administrative separation that resulted in an OTH characterization of service.

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 rehabilitation, 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,

4/28/2025

