



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

██████████
Docket No. 10328-24
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 9 May 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 and your AO rebuttal submission.

You enlisted in the U.S. Navy after receiving an enlistment waiver for a DUI conviction and began a period of active duty service on 11 December 1996. Your pre-enlistment physical examination, on 3 December 1996, and self-reported medical history both noted no psychiatric or neurologic issues, symptoms, history, or counseling. On 18 November 1997 you reported for duty with ██████████ in ██████████.

In the summer of 2000, you visited ██████████ for the purpose of purchasing and using performance enhancing drugs (PED). You administered the PEDs by injection prior to returning stateside. At the ██████████ border you were searched at the pedestrian crossing station and caught with PED paraphernalia (a used syringe and an empty ampule) in your possession. Subsequently, you admitted your drug use to NCIS investigators. On 10 July 2000, you received non-judicial punishment (NJP) for two (2) separate specifications of failing to obey a lawful general regulation and for the wrongful use of a controlled substance (PEDs). You did not appeal your NJP.

Following your NJP, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. Ultimately, on 9 August 2000, you were discharged from the Navy for misconduct with an under Other Than Honorable (OTH) characterization of service, and were 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 changes to your reason for separation and reentry code. You contend that: (a) you have been diagnosed post-service with Attention-Deficit/Hyperactivity Disorder (ADHD) and Traumatic Brain Injury (TBI), (b) both conditions significantly affected your executive functioning and decision-making capabilities while on active duty, (c) as a result of such conditions, you turned to PEDs in an attempt to maintain his physical and mental standards as a SEAL, thus leading to the misconduct underlying your OTH discharge, (d) since your discharge you have acknowledged and taken full responsibility for your actions, (e) you have sought to better understand how your mental health conditions contributed to your behavior, demonstrating both contrition and a commitment to self-improvement, (f) you sacrificed years of your life in service to your country as a SEAL, (g) post-service you continued to serve your community by working as a personal trainer and mentor, and now as a loan consultant, (h) you have lived an honorable life and demonstrated yourself to be trustworthy and loyal, and you have been rehabilitated fully and have expressed remorse for your misconduct, (i) your misconduct is significantly mitigated by your mental health conditions, ADHD and TBI, and (j) due to such conditions your executive decision-making skills suffered deficiencies leading to impulsive and reckless behavior. 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 28 February 2025. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner contends he incurred Traumatic Brain Injury (TBI) and other mental health concerns during military service, which may have contributed to his separation.

Petitioner contended he incurred TBI during military service and suffered from undiagnosed Attention-Deficit/Hyperactivity Disorder (ADHD), which contributed to his decision to use performance enhancing drugs (PEDs) while visiting ██████████.

He claimed that he experienced concussions during his training which contributed to TBI. He claimed that he began using PEDs after returning from deployment because of his lack of time to engage in physical fitness and insecurity regarding his body image.

There is no evidence that he was diagnosed with a mental health condition or TBI in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Temporally remote to his service, a civilian psychiatrist has expressed the opinion that the Petitioner experiences symptoms consistent with TBI that are attributed to military service. The Petitioner has also received a diagnosis of ADHD that is temporally remote to his military service. It is possible that he may have been experiencing symptoms of undiagnosed ADHD throughout his life, including during his military service. Both ADHD and TBI are considered to impact executive function skills, such as planning, decision-making, and inhibition control. However, it is difficult to attribute the Petitioner's use of steroids to ADHD or TBI, as the decision to use PEDs was based on intentional planning and the Petitioner claims it was due to insecurity over his body image.

The Ph.D. concluded, "There is post-service evidence from a civilian provider of TBI that may be attributed to military service. There is post-service evidence from a civilian provider of a mental health condition that may have been present during military service. There is insufficient evidence to attribute his misconduct to TBI or another mental health condition."

Following a review of your AO rebuttal submission, the Ph.D. did not change or otherwise modify their original AO.

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 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 PED-related misconduct was not due to any mental health-related conditions or symptoms. Moreover, even if the Board assumed that your misconduct was somehow attributable to TBI, ADHD, or any other mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful 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 illegal drug and PED use is contrary to Navy core values and policy and poses an unnecessary risk to the safety of their fellow Sailors. The Board also noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. 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.

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, 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,

5/20/2025

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Executive Director

Signed by: █