



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

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Docket No. 10496-24
Ref: Signature Date

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Dear ■■■■■■

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 24 March 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, 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional and your response to the AO.

You enlisted in the Navy after receiving a waiver for pre-service offenses of theft, evading arrest, and curfew violation and disclosing pre-service marijuana use, and commenced active duty on 5 October 1999,

On 29 June 2000, you were convicted at Special Court Martial (SPCM) of conspiracy and wrongful use, possession, etc. of a controlled substance. You were sentenced to reduction in rank to E-1, confinement, and a Bad Conduct Discharge (BCD). Subsequently, the findings and sentence in your SPCM were affirmed and you were issued a BCD on 9 July 2002.

You previously applied to this Board for an upgrade to your characterization of service where you contended that your discharge unjust because your Bipolar Disorder mitigated your misconduct. The Board denied your request on 1 November 2018. Your reconsideration request was administratively closed for lack of new material information on 21 April 2020.

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 change your discharge characterization of service and your contentions that your Bipolar Disorder mitigated your misconduct, you have been clean and sober for twenty months, and you need healthcare and housing assistance. For the purposes of clemency and equity consideration, the Board considered your statement and the substance abuse felony punishment program certificate, post-service medical records, letter from employer, and aftercare certificate you provided.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 19 February 2025. The AO stated in pertinent part:

Petitioner contends he incurred mental health concerns during military service, which may have contributed to his separation from service.

In his current request for review, Petitioner contended he incurred mental health symptoms during military service, which contributed to his misconduct. He provided evidence of character and post-service accomplishment.

Petitioner submitted extensive civilian records of treatment for substance use disorder and other mental health concerns from July 2016 to June 2023. Records indicate intermittent periods of inpatient hospitalization and outpatient treatment, with varying degrees of compliance with treatment recommendations.

Intake records for his July 2016 hospitalization indicate he initially presented for treatment after "he went to the ER [emergency room] to see if he was crazy. He stated he wanted to DC [discontinue] meth[amphetamine] but this therapist questions genuineness [sic]...He stated his meth use may contribute to his paranoia but not totally cause it." He denied any prior psychiatric hospitalization. He endorsed two prior periods of outpatient treatment with his primary care physician and while incarcerated. He acknowledged his bad conduct discharge with the Navy and denied experiencing trauma during his military service. He reported "drug abuse starting at age 14." Discharge diagnoses were listed as Amphetamine Induced Psychotic Disorder and Stimulant Use Disorder, severe, with dependence.

In June 2017, the Petitioner's diagnoses were listed Other Stimulant Dependence, Uncomplicated and Paranoid Personality Disorder. In March 2018, he received an additional diagnosis of Schizoaffective Disorder, Bipolar Type. In April 2018, his Schizoaffective Disorder diagnosis was revised to Major Depressive Disorder, recurrent, moderate.

In November 2019, he received an additional diagnosis of Social Phobia, Unspecified. His provider noted that, at that time, he was admitted voluntarily for psychiatric hospitalization “with the diagnoses of Major Depressive Disorder, recurrent, severe with psychotic features; and Meth[amphetamine] abuse. Admission was sought...reportedly due to depression and his C/O SI/AH [complaints of suicidal ideation and auditory hallucinations]. The complaint of AH is suspect as he does not behave like a person plagued by AH...Could be the AH are derived from his Meth use; but I suspect it’s an embellishment he claims to add to his legitimacy to seek shelter.”

In February 2020, his depression diagnosis was revised to Bipolar Disorder, current episode depressed. In March 2022, he described the traumatic events from his history as: he “was assaulted and hit with brass knuckles breaking facial bones...he was adversely affected by [REDACTED] He] fell of [sic] a ladder and landed on concrete. He spent a year in a cast and...recovery was difficulty [sic]. He...reports ‘seeing a lot of stuff,’ including family violence that was not his family.”

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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Temporally remote to his military service, he has received treatment for mental health concerns that appear unrelated to his military service. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given pre-service misconduct that appears to have continued in service.

The AO concluded, “it is my clinical opinion that there is insufficient evidence of diagnoses of mental health concerns that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition.”

In response to the AO, you provided additional evidence that included a letter from your employer. After reviewing your rebuttal evidence, the AO remained unchanged.

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 SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved 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 considered the likely negative effect your conduct had on the good order and discipline of your unit. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of diagnoses of mental health concerns that may be attributed to military service and insufficient evidence to attribute your misconduct to a

mental health condition. Finally, 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.

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 your post-discharge rehabilitation efforts, 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,

4/10/2025

