



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

  
Docket No. 10636-24  
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. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the Marine Corps and began a period of active duty on 20 November 1996. On 20 February 1998, you were subject to nonjudicial punishment (NJP) for a violation of Article 92 of the Uniform Code of Military Justice (UCMJ) due to disobeying a lawful no-contact order. On 6 August 1998, you were issued two separation administrative counseling warnings advising you to correct deficiencies related to your lack of attention to duty; after leaving your weapon unattended during a deployment and malingering during deployment. On 16 September 1998, you accepted a second NJP for violations of Articles 86 and 134 of the UCMJ, respectively, for failure to go to your appointed place of duty and for breaking restriction by going to an off-base bar while assigned to the liberty risk program.

On 27 July 1998, you were diagnosed with Borderline Personality Disorder (BPD) with dependent features, which resulted in initiation of administrative separation processing by reason of convenience of the government. In the meantime, you received a third NJP for violations of the UCMJ to include Article 91, for being disrespectful toward a senior staff noncommissioned officer and Article 117 for wrongfully using provoking speech. You were subsequently counseled and advised of your pattern of misconduct and pattern of substandard performance as additional bases for involuntary discharge.

Although the records pertaining to your separation processing were not retained in your official military personnel file (OMPF), a counseling entry from 11 February 1999 reflected that you had waived your right to a hearing before an administrative separation board and that your discharge had been approved for the reason of misconduct due to drug abuse. Although your OMPF does not contain a copy of your discharge record, your chronological record reflects that you were discharged on 12 February 1999.

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 your contentions that you were discharged due to a mental health condition which was diagnosed during your military service, you were overwhelmed with grief after your brother's death, and you realize that there were problems during your service but feel that it was completed satisfactorily. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted solely of your petition without any other additional documentation.

Because you contend that a mental health condition affected the circumstances of your discharge, the Board also considered the AO. The AO advised:

There is no evidence that the Petitioner was diagnosed with a mental health condition during his military service. His personal statement is not sufficiently detailed to provide a nexus between any mental health condition and his misconduct. It appears as though he did not participate in any combat deployments, which is contrary to what he noted on DD Form 293. Given an in-service counseling for malingering, his candor is questionable. He did not submit any medical evidence in support of his claim. Additional records (e.g., active duty medical records, post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his separation) might aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that existed in service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

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 NJPs and multiple administrative counseling warnings, outweighed the mitigating factors. 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. The Board observed you were given multiple opportunities 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.

Additionally, 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, you provided no medical evidence with your application and the combat information in your DD Form 293 is contradicted by your record. 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. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your serious misconduct more than outweighed the potential mitigation offered by any mental health conditions.

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. 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. 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

