



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

Docket No. 12236-24

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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 7 March 2025, has carefully examined your current request. 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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 as part of your previous petition and your AO rebuttal submission.

You previously applied to this Board for a discharge upgrade. On 5 July 2024, a Board majority recommended a discharge upgrade to Honorable by a 2-1 vote. The Board minority voted to upgrade your discharge to only a General (Under Honorable Conditions) (GEN) characterization of service. Given that the BCNR's 2024 decision modified a previous decision issued by the Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN MRA), the case was forwarded to ASN MRA for final adjudication. On 6 October 2024, ASN MRA concurred with

the Board's minority conclusion and approved a discharge upgrade in your case only to GEN with other conforming changes to your DD Form 214. The summary of your service remains substantially unchanged from that addressed in the Board's previous decision.

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 contentions that: (a) in your previous application you submitted an AO rebuttal within the allotted time by email, (b) however, the final decision letter approved by ASN MRA indicated in a footnote that you had not submitted an AO rebuttal in a timely fashion, (c) your AO rebuttal should have been included and considered prior to a final adjudication in your case. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application, to include your AO rebuttal submission.

A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records and issued an AO for your previous case dated 16 April 2024. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

The Petitioner submitted a diagnostic summary from Ascension Borgress Hospital noting a diagnosis of anxiety in 2006. He also submitted post-service accomplishments and an article in support of his claim. 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. He submitted evidence of a post-service diagnosis of Anxiety, however the etiology or rationale for the diagnosis is not included with the evidence submitted. His personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a 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 drug-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 PTSD or any other mental health conditions, the Board unequivocally concluded that the severity of your cumulative 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 unanimously determined they were not willing to grant a further upgrade to an Honorable discharge characterization. The Board determined that an Honorable discharge was appropriate only if your service was otherwise so meritorious that any other characterization of service would be clearly inappropriate. The Board did not believe that the your record was otherwise so meritorious to deserve an Honorable discharge and concluded that significant negative aspects of your conduct and/or performance outweighed the positive aspects of your military record even under the liberal consideration standard for mental health conditions. The Board determined that illegal drug use is contrary to military core values and policy, renders such service members unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. The Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. The Board believed that, even though flawless service is not required for an Honorable discharge, in this case, a GEN discharge and no higher was appropriate. Ultimately, the Board concluded your persistent and pervasive polysubstance drug abuse and the fact that three of your NJPs (all non-drug related) occurred prior to your RVN deployment, was ample evidence to deny your request for further relief.

Therefore, while the Board carefully considered the AO rebuttal 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 further 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 further 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,

3/24/2025

