



**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. 363-25  
Ref: Signature Date

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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 15 August 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 and your response to the AO.

You enlisted in the Marine Corps and began a period of active duty on 21 July 1998. On 20 December 1999, you were subject to nonjudicial punishment (NJP) for violation of Article 92 of the Uniform Code of Military Justice (UCMJ) for failure to obey a lawful order.

In July 2000, while afloat in the Mediterranean, you assisted in the rescue operation following the bombing of the ██████████. The following year, on 12 October 2001, you were subject to a second NJP for violation of Article 112a of the UCMJ due to wrongful use of the controlled substance MDMA. You subsequently declined drug rehabilitation treatment. Notwithstanding

regulations requiring mandatory processing for administrative separation in cases of misconduct due to drug abuse, you were not immediately notified of such processing. Instead, you were notified of processing, on 21 February 2002, incident to your receipt of a third NJP for an Article 107 offense due to making a false official statement by knowingly changing the dates of your limited duty chit from 14 days to 40 days. The following day, you requested a hearing before an administrative separation board; however, on 18 March 2002, you elected to voluntarily waive your hearing. The recommendation for your discharge under Other Than Honorable (OTH) conditions was approved following completion of legal review and you were so discharged on 8 April 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 Wilkie, Kurta, and Hagel Memos. These included, but were not limited to, your desire to upgrade your discharge and change your reason for separation and reentry code to reflect a Secretarial Authority discharge. You contend that you were discharged after a one-time positive urinalysis for MDMA and believe that your positive service record, deployment experiences, post-discharge conduct, and service-connected post-traumatic discharge (PTSD) diagnosis warrant consideration of an upgraded characterization on the basis of either, or both, liberal consideration and clemency. You attribute your PTSD to the ██████████ recovery operation; which you contend was further exacerbated later in your deployment while cruising through a hostile area in the ██████████ ██████████. With respect to your drug offense, you admit to accepting a pill from an individual in a bar during a night of heavy drinking; however, you attribute this error in judgment to having begun self-medicating with alcohol as a result of anxiety, depression, and PTSD. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted of your DD Form 149, your personal statement, your legal counsel's brief, four letters of support, and evidence of your disability rating from the Department of Veterans Affairs (VA) with an accompanying PTSD Disability Benefits Questionnaire (DBQ).

Because you contend that PTSD or another mental health condition affected the circumstances of the misconduct which resulted in your discharge, the Board also considered the AO. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition during his military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. He submitted post-service evidence of a diagnosis of PTSD that he claims is a result of his deployment in 2000. Thus, the first incident of misconduct – misuse of his government credit card – cannot be said to be caused by PTSD. Furthermore, making a false official statement is uncharacteristic behavior of someone suffering from PTSD. Finally, although it is possible that he used MDMA to somehow cope with symptoms of a trauma, it is an interesting and unusual choice of substances to use. 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) would aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion that there is sufficient evidence of a post-service diagnosis of PTSD. There is insufficient evidence to attribute his misconduct to a mental health condition."

In response to the AO, you provided additional evidence in support of your application. After reviewing your rebuttal evidence, the AO remained unchanged.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these 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 is contrary to Navy core values and policy, renders such service members unfit for duty, and poses an unnecessary risk to the safety of their fellow Sailors. With respect to your wrongful use of MDMA, notwithstanding that you believe such use resulted from intoxication due to self-medication with alcohol, you recalled accepting the substance from another person. The Board also found that your conduct 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. In this regard, the Board determined that characterization under OTH conditions is generally warranted for misconduct and 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.

Additionally, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to a mental health condition. As pointed out in the AO, your first incident of misconduct occurred prior to your deployment. The Board also was unable to find a reasonable nexus between your falsification of your limited duty chit and a mental health condition. To the extent that the AO assessed the possibility that additional records might render an alternate medical opinion with respect to your in-service drug abuse, the Board noted that additional mental health or medical records are unlikely to negate the specific intent of your Article 107 offense; which the Board separately considered to be equally, if not more, serious than your drug abuse because it reflects adversely upon your integrity and credibility.

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, 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 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,

9/4/2025

