



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

██████████
Docket No. 2480-25
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 8 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. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Navy and began a period of active duty on 1 October 2003. On 22 November 2005, you were convicted by Special Court-Martial (SPCM) for violations of the Uniform Code of Military Justice (UCMJ) to include: Article 92, by failure to obey a lawful general regulation due to possession of drug paraphernalia; and, five specifications under Article 112a, for wrongful possession, two counts of wrongful use, wrongful distribution, and wrongful introduction onto a military installation, of methamphetamine. You were sentenced to 120 days of confinement with

total forfeitures of pay, reduction to the paygrade of E-1, and a Bad Conduct Discharge (BCD). The findings and sentence were approved following appellate review of your SPCM proceedings and you were so discharged on 16 November 2006.

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 your contentions that you served four years honorably but were discharged due to a misdemeanor drug conviction, you served during the Global War on Terrorism and suffered from undiagnosed post-traumatic stress disorder (PTSD), this resulted in substance abuse issues, and your mental health deteriorated while waiting to be called into a war zone and from being out at sea for six months. You also believed that your discharge was characterized as an "OTH with general conditions" but that you noticed after a few years that you had received a Bad Conduct discharge. You further claim to have "put in" for an upgrade after five years without hearing anything, although you did not specify to whom such request might have been submitted. You are trying to change your life, seek forgiveness, and claim to have received substance abuse rehabilitation and mental health treatment since your discharge. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted of your DD Form 149, personal statement, and Department of Veterans Affairs claim form.

Because you contend that a mental health condition affected the circumstances of your discharge, the Board considered the AO. The AO states in pertinent part:

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. He has provided no medical evidence to support his claims. Additionally, it is difficult to attribute substance distribution to mental health concerns.

The AO concluded, "There is insufficient evidence of a diagnosis of PTSD or other mental health concerns that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or other mental health concerns."

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 SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved multiple drug offenses. The Board disagreed with your characterization of your drug misconduct and noted that possession of a controlled substance in a sufficient amount to distribute and wrongful distribution of controlled substance are serious offenses that would not be considered misdemeanor offenses. The Board determined that any illegal drug use, possession, or distribution 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. The Board found that your conduct showed a complete disregard for military authority and regulations. 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.

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.

Additionally, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to PTSD or other mental health concerns. The Board agreed that, even if you had submitted convincing evidence that your personal drug use was attributable to self-medication of a mental health condition, such evidence would not mitigate your distribution of controlled substances to other persons. 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. 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,

8/27/2025

Executive Director

Signed by: