



DEPARTMENT OF THE NAVY  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE RD  
ARLINGTON, VA 22204

██████████  
Docket No. 4602-25  
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 your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 23 January 2026. 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 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). 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 your personal appearance was not necessary and considered your case based on evidence of record.

The following is the relevant factual background of your case based upon review of your naval record and/or the matters provided with your application:

1. You enlisted in the Marine Corps after being granted a waiver for pre-service drug use and began a period of active duty on 11 January 2005<sup>1</sup>.
2. On 28 October 2005, you received nonjudicial punishment (NJP) for violating Article 92 of the Uniform Code of Military Justice (UCMJ) due to violating an order which prohibited consuming alcoholic beverages under the age of 21. You were also issued administrative counseling warning you that further misconduct could result in administrative separation.
3. You deployed to Iraq initially from October 2006 through April 2007, during which period you earned award of the Combat Action Ribbon (CAR). You then deployed again from October 2007 through May 2008.
4. On 8 August 2008, your drug screening urinalysis reported a positive result for cocaine metabolites. You agreed to waive your right to an administrative separation board hearing in return for disposition of your drug abuse charge via Summary Court Martial (SCM).
5. On 16 October 2008, you were convicted by SCM for single charge and specification of violating Article 112a, UCMJ. You were sentenced to reduction to the paygrade of E-1, forfeitures of pay, and 30 days confinement. Your period of confinement resulted in lost time of 20 days from 20 October 2008 through 8 November 2008.
6. On 18 December 2008, while you were pending administrative separation processing, you were convicted by a second SCM for another violation of Article 112a, UCMJ. You received an additional sentence of 15 days confinement. As a result, you incurred an additional 12-day period of lost time from 19 December 2008 through 30 December 2008.
7. On 23 December 2008, you were notified of processing for administrative separation by reason of misconduct due to drug abuse and you waived your rights incident thereto. The recommendation for your discharge under Other Than Honorable (OTH) conditions was forwarded that same day, with a request that it be processed with high priority due to your impending end of active service (EAS) obligation<sup>2</sup>. On 26 January 2009, Commanding General, ██████████ (██████) approved your separation under OTH conditions and you were so discharged on 30 January 2009.
8. Post-discharge, you applied to the Naval Discharge Review Board (NDRB) contending that you incurred post-traumatic stress disorder (PTSD), due to your experience of combat trauma, contributed to your drug abuse misconduct. On 13 July 2022, the NDRB granted an upgraded discharge characterization to General (Under Honorable Conditions) based upon consideration of the mitigating factor of your combat PTSD, your record of military service, personal family issues at the time, and post-service supporting documentation.

After careful review, the Board reached the following conclusions and denied your application for relief.

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<sup>1</sup> Of note, however, your Certificate of Discharge or Release from Active Duty (DD Form 214) Record of Service reflects that your active duty period began on 12 February 2005, due to having been adjusted for lost time of 32 days.

<sup>2</sup> Of note, your final adjusted EAS accounted for an additional 12 days of lost time, carrying it into February of 2009.

The Board initially concluded you were appropriately processed for administrative separation based on your record of misconduct that included drug abuse. While the Board carefully considered your contention for mitigation, the Board noted you did not deny committing the misconduct. Therefore, the Board determined the presumption of regularity applies to the finding that you committed the misconduct that formed the basis of your administrative separation and were properly separated for misconduct with an OTH characterization of service.

Separately, you allege that your end of active service was prejudicially altered to 30 January 2009 during administrative separation proceedings when your original entry date was 11 January 2005, with an EAS of 10 January 2009. In this regard, the Board found no error or prejudice with respect to your actual date of discharge or to the adjustments made to your EAS to account for your lost time during your sentence of confinement. The Board noted that such adjustments are mandated by law and, therefore, presumptively not prejudicial. A close examination of the dates and numbers of days pertaining to your periods of confinement, and of the adjustments to your EAS likewise, revealed no evidence of error. As a result, the Board found that you were clearly administratively separated prior to your properly adjusted EAS of 11 February 2009.

Because you contend that post-traumatic stress disorder (PTSD) and/or a traumatic brain injury (TBI) affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

There is evidence that the Petitioner suffered from PTSD symptoms post-service and that they have been linked to his combat deployments while in service. His NJP occurred prior to his first deployment, and thus – failure to obey a lawful order cannot be said to have been caused by his PTSD. The Petitioner submitted a detailed anecdote and buddy statements of traumatic combat experiences, as well as evidence of diagnosis and treatment thereof. It is unfortunate that he elected to use cocaine and then three months later, marijuana. 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) may aid in rendering an alternate opinion.

The AO concluded, “it is my clinical opinion that there is sufficient evidence of a mental health condition (PTSD) that existed in service. There is insufficient evidence to attribute all of his misconduct to a mental health condition.”

The Board applied liberal consideration to your claim that you suffered from TBI and a mental health condition, and to the effect that these conditions may have had upon the conduct for which you were discharged in accordance with the Hagel and Kurta Memos. Applying such liberal consideration, the Board found sufficient evidence of a diagnosis of mental health condition that may be attributed to military service. This conclusion is supported by the AO. However, even applying liberal consideration, the Board found insufficient evidence to conclude that the misconduct for which you were discharged was excused or mitigated by your mental health condition. In this regard, the Board simply had insufficient information available upon which to make such a conclusion and found that, while your initial substance use might reasonably have been attributable to self-medication of combat trauma, it was less likely that your repeated use was attributable to a mental health condition or TBI after having been renewed awareness of the consequences of such use. Moreover, even if the Board assumed that all your misconduct was somehow attributable to TBI or mental health conditions, the Board unequivocally concluded

that the severity of your serious misconduct more than outweighed the potential mitigation offered by your TBI or mental health conditions.

In addition to applying liberal consideration to your claimed mental health condition and its potential effect upon your conduct in accordance with the Hagel and Kurta Memos, the Board also considered the totality of the circumstances to determine whether equitable relief is warranted in the interests of justice in accordance with the Wilkie Memo. In this regard, the Board considered, amongst other factors, the totality of your service, the non-violent nature of your misconduct, your relative youth and immaturity at the time of your misconduct, the negative effect your discharge has had on your life, your rehabilitation efforts, your post-service record of accomplishments, the character references you provided for review, your service connected disability conditions, and the passage of time since your discharge.

The Board found that the mitigating factors were not nearly sufficient to justify any equitable relief. Specifically, the Board found that the severity of your misconduct far outweighed all of the mitigating factors combined. In particular, 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. The Board also considered that the NDRB found your combat-incurred PTSD, in conjunction with your overall record of combat service and your evidence of post-service clemency, sufficient to warrant an upgrade of your discharge characterization to GEN. The Board determined you already received a large measure of clemency and found insufficient basis for further relief. Finally, the Board believed that it would be unjust to characterize your less than honorable service in the same manner as the service of the thousands of service members who, unlike you, honorably completed their enlistments without engaging in misconduct warranting the early curtailment of their service. In their opinion, it would also create an unwarranted and inaccurate assessment of your period of service that could potentially undermine the integrity of the Department of the Navy's personnel system. Therefore, the Board did not find an upgrade of your discharge to Honorable to be warranted in the interests of justice.

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,

2/18/2026

