



**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: 643-21  
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.

Although you did not file your application in a timely manner, the statute of limitation was waived 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 23 July 2021. 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 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 a qualified mental health provider, one of which was previously provided to you. You were afforded an opportunity to submit an AO rebuttal and you did so.

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

You originally enlisted in the Marine Corps on 12 July 1979. On 29 October 1982 you reenlisted for six years.

On 26 April 1982 you received a “Page 11” counseling entry (Page 11) that stated you were not recommended for promotion to Sergeant (E-5) due to an alcohol-related incident. On 23 May 1983 you received a Page 11 entry documenting your assignment to an alcohol abuse administration and management program due to a DUI. On 2 September 1983 you had your on-base driving privileges revoked for one year starting 10 August 1983. On 19 September 1983 you received a Page 11 for conduct unbecoming a non-commissioned officer and the consequences of financial dealings with subordinates.

On 21 July 1987 pursuant to your guilty pleas, you were convicted at a Special Court-Martial (SPCM) of five specifications of cruelty and maltreatment of your fellow Marines, two specifications of larceny, assault consummated by a battery, three specifications of communicating a threat, gambling with subordinates, and solicitation to commit a criminal offense. You received as punishment a reduction in rank to the lowest enlisted paygrade (E-1), forfeitures of pay for six months, and a discharge from the Marine Corps with a Bad Conduct Discharge (BCD). On 6 November 1987 you were placed on appellate leave awaiting discharge. On 25 July 1989 the Navy-Marine Corps Court of Military Review affirmed the SPCM findings and sentence. On 27 March 1990 your petition for a grant of review with the U.S. Court of Military Appeals was denied. Upon the completion of appellate review in your case, on 9 July 1990 you were discharged from the Marine Corps with a BCD and assigned an RE-4 reentry code.

As part of the Board review process, the Board’s Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records, and issued an AO dated 17 May 2021. The Ph.D. initially observed that on 20 March 1987 you underwent a mental health evaluation after being relieved of duty, but the evaluation did not reveal any psychiatric disorder and there was insufficient information to diagnose a personality disorder. The Ph.D. noted that your in-service records did not contain evidence of a mental health diagnosis. The Ph.D. also noted that throughout your SPCM and administrative processing, there were no concerns noted warranting referral to mental health resources. The Ph.D. determined that although you carried a post-discharge PTSD diagnosis, it was possible the symptoms manifested after your discharge from service in combination with the stressors of adjusting from military to civilian life. The Ph.D. also determined that your misconduct, such as having a subordinate wash and wax your girlfriend’s car, iron your uniforms, having a subordinate provide automobile maintenance on your personal car, stealing gas from government vehicles, soliciting subordinates to steal gas from government vehicles, and gambling with subordinates is not the type of misconduct typically associated with PTSD. The Ph.D. concluded by opining that the preponderance of available objective evidence failed to establish you suffered from a service-connected mental health condition on active duty, or that your misconduct could be mitigated by a mental health condition.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to: (a) you had an honorable characterization of

service from your first enlistment ending in October 1982, (b) the Department of Veterans Affairs (VA) granted you a 100% service-connection for PTSD, (c) your misconduct was directly attributed to suffering from undiagnosed PTSD triggered by a stressful event during your first enlistment, and (d) your PTSD increasingly negatively affected your behavior. However, given the totality of the circumstances, the Board determined that your request does not merit 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 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. The Board observed that your available active duty records did not contain evidence of a mental health diagnosis or psychological/behavioral concerns indicating a mental health condition. The Board concluded that although you have a post-discharge PTSD and depressive disorder diagnosis, active duty records contemporaneous to your service lacked sufficient evidence to establish a nexus between your mental health conditions/symptoms and your in-service misconduct. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. 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 misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record clearly reflected that your misconduct was willful and intentional, and demonstrated you were unfit for further service. Moreover, the Board concluded that the misconduct you committed, particularly the maltreatment and larceny offenses, are not the type of misconduct that would be excused by mental health conditions even with liberal consideration. The Board also concluded 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 noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating certain VA benefits, or enhancing educational or employment opportunities. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard, the Board concluded that your egregious misconduct and disregard for good order and discipline clearly merited your receipt of a BCD.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this is not a case warranting any clemency. You were properly convicted at a SPCM of serious misconduct, and the Board did not find any evidence of an error or injustice in this application that warrants upgrading your

BCD. The Board carefully considered any matters submitted regarding your post-service conduct and accomplishments, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that given the totality of the circumstances your request does not merit 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,

8/3/2021

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Executive Director

Signed by: █