



**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: 3879-21

Ref: Signature Date

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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 19 November 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 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) furnished by a qualified mental health provider which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

You enlisted in the Marine Corps and began a period of active duty on 29 January 1990. You deployed in support of Operations Desert Shield and Desert Storm with Headquarters Battalion, 2d Marine Division, earning a Kuwait Liberation Medal and Saudi Arabia Service Medal. You were not awarded a combat action ribbon for that period of service. On 27 March 1991, administrative remarks in your service record document smoke exposure from burning oil fields during your deployment. Following this deployment, you served without any negative formal counseling entries or documented misconduct and were awarded a Good Conduct Medal on 29 January 1993. Your Certificate of Release or Discharge from Active Duty (DD 214) reflects this

period of continuous honorable active service from 29 January 1990 through 4 November 1993, at which time you reenlisted. You completed the non-resident Staff Non-Commissioned Officer's Course in 1994. As a newly promoted sergeant, your fitness report for the period ending 28 February 1995 called you dependable, observing that you achieved the best possible results with minimal supervision and were trusted to use good judgment. Your next fitness report pronounced you as fully capable of meeting situations head-on and outlined your expertise in handling multiple additional duties and leadership positions. On 22 September 1995, you successfully completed resident Sergeant's Course with a cumulative average of 88.8. You received your second award for Good Conduct on 28 January 1996. In your annual fitness report for the period ending on 29 February 1996, your reporting senior praised your ability to interact well with customers observed that you had "proven to be an outstanding deterrent to theft" in your performance of duties as the Computer Equipment Branch Security Non-Commissioned Officer-in-Charge. You were selected for promotion to E-6 by the Fiscal Year 1996 Staff Sergeant Promotion Selection Board, and your annual fitness report for the period from 11 June 1996 through 28 February 1997 described you as a highly effective leader of multiple Computer Equipment Branch teams, praising your diplomacy when dealing with senior officer and enlisted customers, and your reviewing officer rated you in the top 10% of all Marines he had reported on.

Your records reflect during November 1996, however, that you had stolen an assortment government computer equipment and, on 24 July 1997, your command notified Headquarters Marine Corps that you were pending investigation for larceny of military property in excess of \$2500. Your promotion to staff sergeant was withheld 23 September 1997, and you were placed on legal hold 2 October 1997 pending trial by court-martial. Your command denied your request for separation in lieu of trial and, on 6 January 1998, you plead guilty to two counts charged under Article 108 for the sale of stolen military property and one count of ten consolidated specifications of larceny of government property under Article 121. Your sentence included confinement for 8 months, reduction to E-1, a fine of \$500, and a bad conduct discharge. Following appellate review, your conviction and sentence were affirmed with an order to correct the overly broad period of misconduct from 24 September 1995 – 12 June 1997 to the narrower period of November 1996, and your adjudged bad conduct discharge was ordered executed on 11 February 1999.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warranted relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge and your contentions that you served honorably until troubles arose from undiagnosed mental illnesses – PTSD, bipolar disorder, anxiety and depression, and attention-deficit hyperactive disorder – which affected your marriage, sleep, and self-worth and resulted in an unsound decision making process that ruined your career and ended with divorce and separation from the service. In reviewing your contention of suffering PTSD and multiple mental health conditions, and in the absence of a diagnosis rendered by a licensed psychiatrist or psychologist, the Board applied liberal consideration to evidence which might support the existence of those conditions occurring in-service and also considered the AO in making its determination. The AO noted that your reenlistment physical on 2 August 1993 described your neurologic and psychiatric clinical evaluations as normal and that the remainder of your in-service records contain no diagnosed mental health conditions, symptoms, or behaviors indicative of a mental health condition, and

neither you nor your command raised concerns for your mental health during disciplinary actions, counseling, or during trial proceedings prior to your discharge. The AO further observed that, in addition to not providing any in-service or post-discharge clinical records in support of your petition, you also did not describe any in-service traumatic stressors or symptoms which might meet the criteria for a mental health condition. Likewise, neither you nor counsel raised any concern for your mental health at any time prior to or during your trial or throughout your appellate review prior to you discharge.

In its deliberations, the Board concurred with the AO's assessment that your records contained insufficient evidence to establish that you suffered from a mental health condition at the time of your military service or that your in-service misconduct could be mitigated by such condition. In accordance with the Kurta memo, the Board also noted that premeditated misconduct, such as the larceny and sale of government property, is not generally excused by mental health conditions, and you provided insufficient evidence to assess whether any potential causal relationship exists between your asserted conditions and your premeditated misconduct. Based upon this review, the Board concluded that the potentially mitigating factors you contended were insufficient to warrant relief at this time. Specifically, the Board determined that your misconduct, as evidenced by your conviction by General Court-Martial, outweighed the mitigating evidence you presented. 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 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,

12/1/2021

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Executive Director

Signed by: █