



**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: 4180-21  
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.

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.

Although you did not file your application in a timely manner, the statute of limitations 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 3 December 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 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 14 November 1990. After approximately 20 months of service, you were counseled on 10 July 1992 for lack of leadership and not recommended for promotion. Three days later, on 13 July 1992, you stole a car stereo

valued at approximately \$450 from a fellow Marine. Prior to the discovery of this theft, you received nonjudicial punishment (NJP) on 6 October 1992 for Article 92, for violating a lawful order by operating a vehicle in an unsafe manner. In December of 1993, you were counseled for financial responsibility and again not recommended for promotion. You were charged with larceny for the car stereo that you stole and plead guilty at special court-martial pursuant to a pre-trial agreement to a single specification of Article 121, larceny in excess of \$100. You were sentenced to reduction to the lowest grade, E-1, to 4 months of confinement, to forfeitures, and to a bad conduct discharge (BCD). Following appellate review of your trial, you were discharged on 27 July 1995.

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 contention that you suffered from a mental health (MH) condition while serving in the Marine Corps due to multiple personal stressors that you experienced immediately before and during your enlistment, which adversely impacted your decision making and ultimately resulted in the misconduct for which you were discharged. You further contend that your discharge is unjust in that the discharge is disproportionate to your single, youthful offense and that you have since turned your life around, to include your volunteer service, your career, your success in raising your children, and your lack of further criminal history.

In reviewing your contention of suffering an MH condition, 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 a diagnosis and of that condition occurring in-service and also considered the AO in making its determination. The AO observed that you submitted a personal statement with your petition outlining the personal stressors you experienced at the time of your misconduct, to include the illness and subsequent death of your mother, your spouse's infidelity, and your step-father's gender reassignment. Your in-service medical records were not available for review, and you did not provide any post-service records of any clinical diagnosis for consideration. Your service record contained no indication of any psychological symptoms indicative of an MH diagnosis, nor did you describe any in your statement with your petition. As a result, the AO opined that there was insufficient evidence of any diagnosis of an MH condition that could be attributed to your military service or that your misconduct could be attributed to a mental health condition.

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 and that you did not submit any clinical records in support of your petition. The Board also observed that you did not submit any documentation in support of your contentions relating to injustice and clemency; specifically, you did not provide any records to support your post-service volunteerism or contributions to your community, your lack of criminal history, your career or business successes, your professional difficulties encountered as a result solely of your discharge, or character letters in support of your contentions. The Board further noted that, even with an upgraded characterization of service and change to the narrative reason for separation, the criminal record of your conviction by special court-martial is a separate matter beyond the

scope of the Board's authority. Finally, in accordance with the Kurta memo, the Board acknowledges that premeditated misconduct, such as larceny, is not generally excused by mental health conditions, and you provided insufficient evidence to assess whether any potential causal relationship exists between your asserted mental health condition and the premeditated misconduct for which you were convicted. Based upon this review, the Board concluded that the potentially mitigating factors you contended were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your conviction at special court-martial, your NJP, and your negative administrative counseling outweighed the mitigating evidence you presented for consideration at this time. 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,

1/9/2022

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Executive Director

Signed by: █