



**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: 4829-21  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 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 6 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 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 considered a 15 September 2021 advisory opinion (AO) furnished by a qualified mental health provider, a copy of which was provided to you and to which you did not provide a response.

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 enlisted in the Marine Corps and commenced a period of active duty on 26 June 1995. On 2 July 1996, you received nonjudicial punishment for drinking under age. On 26 August 1996, you received a formal written warning concerning passing and uttering worthless checks. On 25 July 1997, you received nonjudicial punishment for conspiring with other Marines to commit an

offense under the Uniform Code of Military Justice, wrongfully appropriating a military vehicle, and failing to make a required payment. On 13 November 1997, you received another formal written warning, this time relating to a letter of indebtedness and also for your developing pattern of misconduct. On 23 July 1998, you received nonjudicial punishment for failing to attend a required class and for making a false statement to a master sergeant. On 27 August 1998, you received nonjudicial punishment for uttering two worthless checks, and another formal written warning concerning your lack of regard for military integrity in connection with managing your debts. On 16 December 1998, you received nonjudicial punishment for cashing checks without sufficient funds in the bank and for failing to maintain sufficient funds in the bank. Thereafter, you were notified of the initiation of administrative separation processing, and on 9 February 1999, the discharge authority directed that you be discharged with an other than honorable characterization of service. On 17 February 1999, you were so discharged.

The Board carefully considered all potentially mitigating factors in your petition to determine whether the interests of justice warrant relief in your case including in accordance with the Wilkie Memo. You contend in your petition that you put all of your heart into being a Marine and you still hold the same pride, and that you practice honor, courage, and commitment in your career now. You state that after your discharge, you were diagnosed with schizoaffective disorder, ADHD, General Anxiety Disorder, among other things, and that it took you years to find the right solution of medication, but that you are good today.

In connection with your assertion that you suffered from a mental health condition, the Board requested, and reviewed, the AO. The AO reviewed your service record as well as your petition and the matters that you submitted. According to the AO:

Petitioner's in-service record revealed enlistment and discharge physical examinations without history of mental health or substance abuse issues. On his discharge report of medical assessment, he denied any mental health symptoms or conditions and was found physically qualified for discharge. The remainder of Petitioner's in-service records did not contain evidence of a diagnosis of a mental health condition or psychological / behavioral changes, which may have indicated a mental health condition. Throughout his disciplinary actions, counselings, and administrative processing, there were no concerns noted which would have warranted referral to mental health resources. Although he claimed a mental health condition, he did not provide any description of symptoms, which would meet the criteria for a mental health condition, indicate how those symptoms interfered with his ability to function, or linked any symptoms to his misconduct.

The AO concluded, "it is my considered medical opinion the preponderance of objective evidence failed to establish Petitioner suffered from PTSD or other unfitting mental health condition at the time of his military service, or his in-service misconduct could be attributed to PTSD or other unfitting mental health condition."

Based upon its review, the Board concluded the potentially mitigating factors that you raised were insufficient to warrant relief. With respect to your contention relating to a mental health condition, the Board concurred with the findings of the AO. The Board noted that the AO

observed that you did not provide medical evidence demonstrating that your misconduct could be attributed to a mental health condition. The Board acknowledged your position that you have overcome mental health challenges, but it was unable to find a nexus between that and your naval service. Thus, in light of your receipt of nonjudicial punishment on five occasions, despite your receipt of three formal written warnings documenting your misconduct and explaining the consequences of continued misconduct, as well as the finding of the AO that found no mental health condition that could mitigate your misconduct, 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,

12/20/2021

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Executive Director

Signed by: █