



**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: 7342-21  
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 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 11 February 2022. 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 which was previously provided to you. You were afforded an opportunity to submit an AO rebuttal, and you did do 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.

Following completion of Officer Candidate School (OCS), on 3 April 1998 you commissioned as a Second Lieutenant (O-1) in the U.S. Marine Corps. Prior to ultimately graduating from OCS in █ you had been disenrolled from an earlier OCS class in █ for

unsatisfactory performance. Your pre-commissioning physical examination on 13 August 1996 and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 1 May 2002 you promoted to the rank of Captain (O-3).

On 10 December 1999 you received a "Page 11" counseling entry (Page 11) documenting a failure to pay just debts in regards to a loan you had with the [REDACTED]. The Page 11 warned you that a failure to take corrective action can/will result in further administrative or legal action being taken against you. You did not make a Page 11 rebuttal statement.

The misconduct forming the basis of your discharge occurred between December 2006 and March 2007. According to the Commanding General, [REDACTED] in his Report of Nonjudicial Punishment to the Commandant of the Marine Corps (CMC), during December 2006 you were serving as the senior [REDACTED] representative at the U.S. Embassy in [REDACTED] in support of a [REDACTED] trial of a U.S. Marine. You received a lawful order to begin residing in government quarters aboard the U.S. Embassy and to utilize government provided subsistence. Rather than comply with the order, you took actions to create the appearance you had complied with the order and eventually made a false official statement to your Battalion Commander that you had in fact resided in government quarters. Upon returning to [REDACTED], you knowingly submitted three fraudulent travel claims for commercial lodging and per diem, for the period you were supposed to have been in government quarters and on government-provided subsistence. Following the initiation of legal proceedings, you settled your debt to the government for approximately [REDACTED].

On 12 September 2007 you submitted a qualified resignation request to the Secretary of the Navy in lieu of administrative separation processing for cause. You expressly understood and acknowledged that if accepted, you would receive an other than honorable conditions (OTH) characterization of service. You also acknowledged that with an OTH discharge you might be deprived of substantial rights, benefits, and bounties which federal or state legislation confers or may confer upon persons with honorable service in, or separated from, the armed forces, and that you may expect to encounter substantial prejudice in civilian life in situations where the nature of service rendered in, or the character of separation from, the armed forces may have a bearing. As a result of this course of action, you were spared having to show cause for retention at a Board of Inquiry (BOI) composed of senior USMC officers.

On 26 September 2007 you received non-judicial punishment (NJP) from CG [REDACTED]. In accordance with your pleas, you were found guilty of: (a) disobeying a superior commissioned officer, (b) failing to obey an order or regulation, (c) making a false official statement, (d) larceny, and (e) making a false claim by submitting three (3) fraudulent travel claims. You were awarded as punishment a punitive letter of reprimand (PLR). You did not appeal your NJP or PLR.

On 25 October 2007 the CMC recommended to the Assistant Secretary of the Navy for Manpower and Reserve Affairs (ASN(M&RA)) that your qualified resignation request be

approved and you receive an OTH characterization of service for unacceptable conduct. On 2 November 2007 ASN(M&RA) approved the CMC's recommendation. Ultimately, on 6 December 2007 you were discharged from the Marine Corps for "unacceptable conduct" with an OTH characterization of service. You also received an adverse fitness report for the reporting period ending 6 December 2007 which did not recommend you for promotion.

On 16 June 2011 the Naval Discharge Review Board (NDRB) denied your application for relief. The NDRB determined that your discharge was proper as issued and no change was warranted. On 18 November 2014 the VA granted you a service-connection for PTSD, to include panic attacks, persistent depressive disorder, and alcohol use disorder in full stable remission. The VA assigned you a 100% rating with an effective date of 21 May 2013.

On 15 May 2015 the Board denied your initial petition. The Board determined that the seriousness of your misconduct outweighed any mitigation that would be offered by the PTSD. On 15 July 2016 the Board denied your second petition. The Board found insufficient evidence to support your assertion that PTSD may have caused your misconduct. As a result, the Board was unable to substantiate your PTSD claims at the time of your misconduct, and it was the Board's opinion that the seriousness of your misconduct outweighed any mitigation that would be offered by the PTSD.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 23 December 2021. The Ph.D. initially observed that your service record did contain evidence of a diagnosis of a mental health condition for which you began treatment. The Ph.D. noted your contention that your misconduct was the result of your mental health condition. The Ph.D. determined that although you were service-connected for a mental health condition, disability determinations temporally remote from termination of active service are not indicative of fitness for duty at the time of release from active service. The Ph.D. also determined that PTSD and panic disorder do not typically lead to misconduct such as filing a fraudulent travel claim. The Ph.D. also observed that your voluntary statement and psychiatric evaluation on active duty described an individual who knew what he was doing was wrong and whose mental health symptoms were not so disabling as to interfere with daily functioning and decision making. The Ph.D. concluded by opining that there was sufficient evidence you exhibited behaviors associated with a mental health condition on active duty, but the preponderance of available objective evidence failed to establish your active duty 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, your contentions that you were suffering from undiagnosed and untreated PTSD/panic attacks that were not considered or ignored during investigation or punishment. However, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board unequivocally determined that your discharge from the Marine Corps and separation with an OTH characterization was warranted under the totality of the circumstances. The Board concluded that the substantiated misconduct from your NJP clearly demonstrated you had minimal potential to contribute positively to the Marine Corps as an officer responsible for the care and well-being of enlisted Marines. Accordingly, the Board found that your qualified resignation and discharge in lieu of processing for an administrative separation at a BOI to be appropriate under the totality of the circumstances.

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 whatsoever 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 contain evidence of a mental health diagnosis or psychological/behavioral concerns indicating a mental health condition. The Board concluded that although you have a service-connection for PTSD to include panic attacks, persistent depressive disorder, and alcohol use disorder in full stable remission, 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 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 as a Marine Officer. Moreover, the Board concluded that the specific misconduct you committed - willful disobedience of orders, filing false claims and larceny - were not the type of misconduct that would be excused or mitigated 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. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a commissioned officer. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. The Board carefully considered any matters submitted regarding your character, 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. Accordingly, the Board determined that there was no impropriety

or inequity in your discharge, and even under the liberal consideration standard, the Board concluded your serious misconduct clearly merited your receipt of an OTH, and that such action was in accordance with all Department of the Navy directives and policy at the time of your discharge.

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,

2/24/2022

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Executive Director

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