



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

█  
Docket No: 155-22

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 18 May 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. Although you were afforded an opportunity to submit an AO rebuttal, you did not do so.

You enlisted in the Marine Corps on 17 August 1999. Your pre-enlistment physical examination on 26 January 1999 and self-reported medical history noted no psychiatric or neurologic conditions or symptoms.

On 15 February 2000, you commenced a period of UA that terminated after twenty-seven days, on 13 March 2000, with your surrender to military authorities. On 16 March 2000, you commenced a second period of UA that terminated after 501 days on 30 July 2001. Your

command referred charges to a Special Court-Martial for your 501-day UA. On 8 August 2001, you submitted a voluntary written request for an administrative discharge in lieu of a trial by court-martial for your UA. Prior to submitting this voluntary discharge request, you conferred with a qualified military lawyer, at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. You expressly acknowledged that if this request was approved, the least favorable characterization of service could be under Other Than Honorable conditions (OTH). As a result of this course of action, you were spared the stigma of a court-martial conviction for your long-term UA, as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a military judge. Ultimately, on 29 August 2001 you were separated from the Marine Corps with an OTH discharge and assigned an RE-4 reentry code.

As part of the Board review process, the BCNR Physician Advisor, who is a licensed clinical psychologist (Ph.D.), reviewed your mental health contentions and the available records before issuing an AO dated 12 March 2022. The Ph.D. stated in pertinent part:

Petitioner's OMPF did not contain evidence of a diagnosis of a mental health condition. Although records did reflect poor coping skills, they did not reflect evidence of reported psychological symptoms/behavioral changes indicative of a diagnosable mental health condition. Additionally, Petitioner did not provide clarifying information about his MHC (i.e., symptoms experienced, how the symptoms interfered with his ability to perform his duties). The lack of clarifying information made available did not provide enough markers to establish an onset and development of mental health symptoms or identify a nexus with his misconduct. Furthermore, stressors in military life are different from those in civilian life and although healthy coping skills are important, the lack thereof does not constitute a mental health condition.

The Ph.D. concluded, “[b]ased on the available evidence, it is my considered clinical the preponderance of available objective evidence failed to establish Petitioner suffered from a mental health condition at the time of his military service or his in-service 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) when you were denied a tryout for scout sniper you got depressed and angry and went AWOL, (b) for over twenty years you have regretted that bad choice, but want some recognition for the time you did serve honorably, and (c) you are asking for a small mercy and discharge upgrade so you may talk with fellow veterans on a similar level about the good things the Marine Corps taught you. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

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 convincing evidence you suffered from any type of mental health condition while on active duty, or that any such mental health conditions or symptoms were related to or mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related symptoms. The Board determined the record clearly reflected that your misconduct was willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions.

Additionally, the Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average in conduct was 2.48. Marine Corps regulations in place at the time of your discharge required a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your serious misconduct which further justified your OTH characterization of discharge.

The Board also 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 generally warranted for misconduct and 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 Marine. The simple fact remains is that you left the Marine Corps while you were still contractually obligated to serve and you went into a UA status for over sixteen months without any legal justification or excuse. Lastly, absent a material error or injustice, the Board generally will not summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. In light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. 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 serious misconduct clearly merited your receipt of an OTH, and that your separation 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,

6/9/2022

