



**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: 0270-22  
7728-04  
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 27 June 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). The Board also considered an advisory opinion (AO) from a qualified mental health professional dated 1 April 2022. Although you were provided an opportunity to respond to the AO, you did not do so.

You previously applied to this Board for an upgrade to your characterization of service and were denied on 8 June 2005. Before this Board's denial, the Naval Discharge Review Board also denied your request for relief in June 1992.

During your enlistment processing you disclosed a minor speeding traffic violation for which you paid a fine and were granted a local traffic waiver to enlist. You enlisted in the Marine Corps and began a period of active duty on 17 June 1980. On 31 October 1980, you received your first nonjudicial punishment (NJP) for sleeping on post. You received a second NJP, on 18 November 1980, for again sleeping on post. On 1 June 1981, you received a third NJP for violating a base

order. This was followed by several administrative remarks which documented you were counseled for and assigned to the weight control military appearance program, for not being recommended for promotion due to weight control and lack of leadership, and due to your frequent involvement with military authorities. On 29 August 1981, you received a fourth NJP for disrespect towards an E-5, followed by a fifth NJP, on 30 October 1981, for larceny. Finally, you received a sixth NJP for unauthorized absence (UA) on 18 March 1983. During this period you also spent approximately 144 days in the hands of civil authorities for civilian infractions and were convicted of robbery on 7 December 1982.

On 21 March 1983, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of civil conviction. You were advised of, and waived your right to consult with counsel. You subsequently elected your right to present your case to an administrative discharge board (ADB). The ADB was held on 9 May 1983 and recommended you be discharged with an Other Than Honorable (OTH) characterization of service. The Separation Authority agreed and directed you be separated with an OTH by reason of misconduct – civil conviction. You received a seventh NJP on 26 May 1983, for three specifications of UA and also spent an additional 55 days in the hands of civilian authorities. On 1 August 1983, you were discharged with an OTH.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge character of service and contentions that, (1) you were discharge unfairly and wrongly accused of an incident that you had no knowledge of, (2) you lived off base and would hitch a rides to the base for work and, in this specific instance, the person who gave you a ride was stopped and had illegal aliens in the back of his vehicle without your knowledge, (3) you were not given a fair trial and were presumed guilty before being given a chance to present your case, (4) you come from a military family, planned on being a career soldier, and would have never compromised your career, and (5) you suffered from mental health conditions while on active duty that would be rated by the Department of Veterans Affairs at 100%. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 1 April 2022. The AO noted in pertinent part:

Among the available documents, there is no evidence that the Petitioner was diagnosed with a mental health condition during military service. Throughout his military processing, there were no concerns raised of a mental health condition that required evaluation. Unfortunately, he has provided no post-service medical evidence to support his claim. The Petitioner's statement is temporally remote from his military service, inconsistent with his military record, and not sufficiently detailed to establish a clinical diagnosis or a nexus with his misconduct. Additional records (e.g., post-service records describing the

Petitioner's diagnosis, symptoms, and their specific link to his misconduct) are required to render an alternate opinion.

The AO concluded, "[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to PTSD or another mental health condition."

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your seven NJPs and civil conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your record of misconduct showed a complete disregard for military authority and regulations. Further, the Board considered the prejudicial effect your civil conviction likely had on the Marine Corps. The Board noted that you did not provide any evidence to substantiate your contentions. Finally, the Board concurred with the AO and determined that there is insufficient evidence that your misconduct could be attributed to PTSD or another mental health condition. As a result, the Board determined your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization. After applying liberal consideration, 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, given the totality of the circumstances, the Board determined your request does not merit relief.

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,

7/8/2022

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Executive Director

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