



**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: 1536-22  
2139-98  
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 22 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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) furnished by a qualified mental health professional dated 25 May 2022, and your response to the AO.

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 previously applied to this Board for an upgrade to your characterization of service and were denied on 29 June 1999. Before this Board's denial, the Naval Discharge Review Board also denied your request for relief in 1998.

You enlisted in the Marine Corps and began a period of active duty on 27 August 1984. On 24 January 1986, you were convicted by a special court-martial (SPCM) of an unauthorized absence (UA) totaling two days, failure to obey a lawful written order, and assault. As punishment, you were sentenced to confinement, forfeiture of pay, reduction in rank, and a Bad Conduct Discharge (BCD). The BCD was subsequently approved at all levels of review and, on 21 November 1986, you were so discharged.

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 contention that you incurred PTSD from witnessing your mother's murder and were hospitalized for almost four months prior to your high school graduation, after which you entered boot camp. You further contend that your "outburst" at the barracks was due to pressures increasing from your personal tragedy and compounded by false reports of an off-base incident, which you state was "provoked" and you were "lied on" of how it happened. 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 25 May 2022. The AO stated in pertinent part:

During military service, the Petitioner was diagnosed with an Adjustment Disorder and a Personality Disorder. These diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose to the mental health clinician, and the psychological evaluation performed by mental health clinicians over multiple sessions. A personality disorder is pre-existing to military service and by definition is neither incurred in nor exacerbated by military service, as it indicates lifelong characterological traits unsuitable for military service. There is no evidence that these diagnoses were in error. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is temporally remote from military service and not sufficiently detailed to establish symptoms of PTSD, or provide a nexus with his misconduct, particularly as it is inconsistent with his service record, which indicates no mental health treatment prior to military service. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

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

Based upon this review, the Board concluded that your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your SPCM conviction, outweighed these mitigating factors. In making this finding, the

Board considered the seriousness of your misconduct and concluded that it showed a complete disregard of military authority and regulations. The Board further concluded that the discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your BCD. Additionally, 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. As a result, the Board determined your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD 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,

7/7/2022

