



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

█  
Docket No: 1590-22  
Ref: Signature Date



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 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 Board waived the statute of limitation 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 29 April 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 the 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 to 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 the advisory opinion (AO) furnished by a qualified mental health provider and licensed clinical psychologist which was previously provided to you. You were afforded an opportunity to submit a rebuttal to the AO, but did not.

You enlisted in the Marine Corps began a period of active service on 29 January 2003. You were counseled, on 29 July 2003, for violating Article 86 by failing to check in with the aircrew corpsman after a medical appointment on 18 July 2003 and for an unauthorized absence on 21 July 2003. You were counseled again, on 6 October 2003, for underage consumption of alcohol and for falsely identifying yourself as a BOOST student. You received nonjudicial punishment, on 28 May 2004, for two violations of Article 92 for failure to comply with the liberty buddy

system and for wrongfully operating a motorcycle. You were counseled, on 2 September 2003, for body composition program failure.

Unfortunately, the documents related to your administrative separation are not in your official military personnel file (OMPF). In this regard, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on your DD Form 214, you were processed for administrative separation, waived your right to a hearing before an administrative board, and were discharged on 16 December 2004 for misconduct due to pattern of misconduct with an Other than Honorable (OTH) characterization of service.

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. The Board carefully weighed all potentially mitigating factors, such as your desire to upgrade you discharge and your contentions that you developed severe depression and anxiety after suffering an impaired physical condition and weight problems due to a shoulder injury which required surgery. In addition, the Board considered the medical evidence you submitted. Because you contend a mental health condition, the Board also considered the AO, which noted in pertinent part:

Petitioner's OMPF did not contain evidence of a diagnosis of a mental health condition or reported psychological symptoms/behavioral changes indicative of a diagnosable mental health condition. Evidence submitted by Petitioner disclosed a positive screening for a mental health condition; however, there is no evidence of a formal diagnosis, treatment, or other follow-up with mental health. Petitioner did not provide clarifying information about his MHC (i.e., diagnosis, symptoms experienced). 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.

The AO concluded, "[based on the available evidence, it is my considered clinical opinion 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."

After their review, the Board concluded your misconduct, as evidenced by your NJP and multiple counselings, outweighed the mitigation factors. In making this finding, the Board concurred with the AO and considered the seriousness of your misconduct. Ultimately, the Board was not persuaded by your evidence and determined your misconduct showed a complete disregard for military authority and regulations. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization. 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 your request does not warrant 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 is attached 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,

5/10/2022

