



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

■  
Docket No: 3052-22  
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 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 28 September 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 the advisory opinion (AO) furnished by a qualified mental health professional, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to 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.

You enlisted in the Marine Corps and began a period of active duty on 1 September 1987. During the period from 12 February 1988 to 10 April 1989, you received four instances of non-judicial punishment (NJP). Your offenses were conduct unbecoming of a Marine, failure to obey

a lawful written order, larceny, and misbehavior while posted as a sentinel. On 11 April 1989, you were issued an administrative remarks (Page 11) counseling concerning deficiencies in your performance and conduct: specifically, your frequent involvement with the Uniform Code of Military Justice. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative separation from the naval service.

On 16 May 1989, you received your fifth NJP for assault upon another Marine. As a result, on 8 August 1989, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to pattern of misconduct. You were advised of and waived your procedural rights to consult with military counsel and to present your case to an administrative discharge board (ADB). Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Marine Corps with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed your OTH discharge from the Marine Corps by reason of misconduct due to pattern of misconduct. On 22 September 1989, you were discharged from the Marine Corps with an OTH characterization of service by reason of misconduct due to pattern of misconduct.

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 incurred depression and alcohol use disorder from the hazing you received from your platoon; 2) because of your abilities in your performance your platoon took out their aggressions on you; 3) you were scrutinized because of your disorder and influenced by members of your platoon to drink and do things that other Marines did not have to go through; and 4) you were young and naïve. 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 6 July 2022. The AO noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. 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, "it is my considered clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service.

There is insufficient evidence 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 five NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your unit. While the Board considered your contentions, the Board noted you provided no evidence to substantiate them. Finally, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service, and there is insufficient evidence 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,

10/13/2022

