



**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: 3999-22  
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 17 October 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 and your response to the AO.

You enlisted in the United States Marine Corps and had an initial period of service from 8 July 2002 to 30 November 2002. You were given an Entry Level Separation after sustaining a wrist injury. After obtaining a medical waiver, you began a second period on active duty service on 5 May 2004.

On 29 September 2004, you received non-judicial punishment (NJP) for failure to obey a lawful order and for being drunk and disorderly. On 26 January 2005, you were taken to NJP for failing to go to your appointed place of duty, failing to obey a lawful order (two specifications), and for making a false official statement. You did not appeal either NJP. After both NJPs, you received

administrative counseling, advising you that further deficiencies could result in disciplinary and/or administrative measures.

On 1 September 2005, you received NJP for wrongful use of marijuana. As a result, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to drug abuse. You acknowledged and waived your right to submit a written rebuttal. On 13 October 2005, prior to the execution of your separation, you were again found guilty at NJP for unauthorized absence and failure to obey a lawful order. Ultimately, on 18 November 2005, you were discharged from the Marine Corps for misconduct, "Drug Abuse" with an "Other than Honorable" (OTH) characterization of service, the separation code of "HKK1," and assigned an "RE- 4B" reentry code.

Post-discharge, you submitted an application to the Naval Discharge Review Board (NDRB) for an upgrade to your characterization of service. On 11 July 2008, the NDRB denied your request after determining your discharge was proper as issued.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to: (a) your desire to upgrade your discharge character of service and change your reentry code, (b) your assertion that you requested medical treatment and your command failed to provide requested assistance, and (c) that you have suffered from PTSD as a result of your wrist injury and the subsequent trauma associated with that injury. For purposes of clemency consideration, the Board noted your college transcript and your statement that you have reference letters asserting that you were a model Marine.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 11 August 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. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to 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 attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD."

In response to the AO, you explained that you "have not had any luck in seeing a doctor for my PTSD claim" and therefore are unable to provide any supporting medical documentation. You explain that during your time attached to the unit, you had numerous incidents that caused you to

drink due to mental stress, resulting in PTSD associated with your wrist injury. You further provide that you requested medical assistance multiple times while in service and were denied.

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 four NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your continued misconduct and the fact that one NJP involved a drug offense. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board also determined that illegal drug use is contrary to the Marine Corps core values and policy, renders such Marine unfit for duty, and poses an unnecessary risk to the safety of fellow Marines. In making this finding, the Board concurred with the AO that there is insufficient evidence your misconduct could be attributed to PTSD or another mental health condition. Additionally, the Board took into consideration that, while facing separation, you were again found guilty at NJP, which demonstrates your complete disregard for military authority and regulations. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. 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 and RE-4B reentry code. While the Board commends your post-discharge accomplishments, even 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, changing your reentry code, or granting clemency in your case. Finally, while you argue that your DD Form 214 "doesn't reflect my wartime campaign during the 2004-2005 period," the Board found no evidence in your service record which indicate participation in a wartime campaign. 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,

10/24/2022

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Executive Director

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