



**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: 4411-22  
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 23 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 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) of a qualified mental health provider and your response to the AO.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 15 December 1998. You were counseled on 24 August 1999 relating to nonjudicial punishment proceedings which were conducted for underage drinking and, instead of punishment, issued warnings regarding the possibility of administrative separation if your misconduct continued. However, you received NJP, on 17 September 1999, for Article 86, absence without leave, and Article 92, failure to

obey a lawful order or regulation due to additional underage drinking. You received a second NJP, on 18 February 2000, for underage drinking as well as a violation of Article 134 for wrongfully possessing a false state driver's license. While still in a restricted status, you absented yourself without authority from 14 March 2000 through 11 April 2000, after which you were convicted by Summary Court-Martial (SCM) for violations of Article 86 (unauthorized absence), Article 90 (disobeying a superior commissioned officer), and Article 134 (breaking restriction). You were processed for administrative separation for misconduct due to commission of a serious offense; you consulted counsel and elected to waive your right to an administrative hearing or to submit a statement. The recommendation for your separation under Other Than Honorable (OTH) conditions was approved by Commanding General, ██████████ Marine Division, and you were discharged on 2 August 2000.

Your previous application to the Board was administratively closed due to being incomplete; therefore, your request was considered de novo.

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 and your contentions that you made poor decisions during and after your active duty service due to a traumatic brain injury (TBI) which occurred during your military service. For purposes of clemency consideration, the Board noted you provided an advocacy letter but no supporting documentation describing post-service accomplishments.

Because you contend that a TBI affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

The Petitioner has provided evidence of a TBI incurred during military service and post-service evidence of a diagnosis of PTSD attributed to the assault which resulted in TBI. Unfortunately, his misconduct occurred prior to the assault and can not be attributed to the event.

The AO concluded, "it is my clinical opinion that there is evidence of a TBI that may be attributed to military service. There is post-service 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 or TBI."

In response to the AO, you provided additional evidence in support of your application.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and SCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO regarding the lack of evidence supporting your contentions that your misconduct during your military service could be attributed either to your TBI or to a post-traumatic stress disorder arising from the assault. 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 noted that you also submitted post-discharge evidence of good

character; however, 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 that your request does not merit 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,

10/6/2022

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Executive Director

Signed by: █