



**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: 4631-22  
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 19 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 an advisory opinion (AO) from a qualified mental health professional dated 23 August 2022. Although you were provided an opportunity to comment on the AO, you chose not to do so.

You entered active duty with the Marine Corps on 10 July 1984. On 8 April 1985, you received non-judicial punishment (NJP) for two specification of unauthorized absence (UA) and two specifications of disobeying a lawful order. On 30 May 1985, you received a warning counseling due to your lack of motivation, stamina, and unwillingness to carry out orders. During the period from 27 June 1985 to 7 May 1987, you received three NJPs for two specification for failure to go to appointed place of duty, incapacitated for the performance of duty, and disobeying a lawful order from a commissioned officer. During the period from 7 August 87 to 15 January 1988, you received three warning counseling due to your frequent involvement with military authorities, your subsequent return to alcohol drinking after completing the Alcohol Rehabilitation Treatment Program, and writing bad checks. On 6 May 1988, you received an additional NJP for disobeying a lawful order and destruction of government property.

Subsequently, you were notified of pending administrative separation action by reason of misconduct due to minor disciplinary infractions. You elected to consult with legal counsel and requested an Administrative Discharge Board (ADB). However, on 30 June 1988, you changed your decision and elected to waive your rights. Your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to minor disciplinary infractions, with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation and, on 29 July 1988, you were so discharged.

You previously applied to this Board for a discharge upgrade but were denied on 1 November 1985 and 20 July 2020. The Board determined the mitigation evidence you submitted in support of your request was insufficient to offset the seriousness of your misconduct, which resulted in five non-judicial punishments (NJP).

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, your desire to upgrade your discharge and contentions that you incurred PTSD and other mental health concerns during military service. You assert that you were experiencing undiagnosed PTSD from childhood trauma, suffering from personal stressors from a bad divorce, and received treatment for your alcohol disorder. 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 23 August 2022. The AO stated in pertinent part:

During military service, the Petitioner was diagnosed and received treatment for an alcohol use disorder. There is no evidence of a diagnosis of another mental health condition during military service, and he has provided no medical evidence to support his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct, particularly as there are inconsistencies with his service record. 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 that may be attributed to military service. There is insufficient evidence of another mental health condition, other than alcohol use disorder, 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your five NJPs and multiple counsellings, outweighed these potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that your conduct showed a complete disregard for military authority and regulations. Further, the Board considered the likely negative impact your conduct had on the good order and discipline of your command. In addition, the Board concurred with the AO that there is insufficient

evidence that your misconduct could be attributed to PTSD or another mental health condition. Finally, the Board noted that there is no evidence in your record, and you submitted none, to support your contentions. 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. 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 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 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,

10/25/2022

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Executive Director

Signed by: █