



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

█  
Docket No: 5271-22  
Ref: Signature Date



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 14 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider. Although you were afforded an opportunity to submit an AO rebuttal for consideration, 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 entered active duty on 26 February 1996. As part of your enlistment application, on 17 January 1996, you signed and acknowledged the "Statement of Understanding Marine Corps Policy Concerning Illegal Use of Drugs." Your pre-enlistment

physical examination, on 19 January 1996, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 9 May 1996, your command issued you a “Page 11” counseling warning (Page 11) noting you were caught writing threatening remarks towards another recruit during mess and maintenance on 29 April 2002, as well as conspiring with another recruit to take your squad leader out to the desert during leave and cause serious bodily harm to him. The Page 11 expressly warned you that further actions may be grounds for disciplinary action and/or discharge from the Marine Corps. You did not submit a Page 11 rebuttal statement. On 20 May 1996, your command issued you a Page 11 document your poor judgment in violating USMC alcohol abuse policy after drinking two bottles of Listerine to get a “buzz.” You did not submit a Page 11 rebuttal statement.

On 20 February 1997, you received non-judicial punishment (NJP) for two separate specifications of disobeying a lawful order, as well as the destruction of government property for intentionally breaking a window in the Bachelor Enlisted Quarters. You did not appeal your NJP.

On 16 January 1998, you were convicted at a Summary Court-Martial of the wrongful use of a controlled substance (methamphetamine), and for unauthorized absence (UA). As punishment you were sentenced to a reduction in rank to the lowest enlisted paygrade (E-1), forfeitures of pay, and confinement for thirty days.

On 16 January 1998, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. You consulted with counsel and waived your rights to submit a rebuttal statement and to request a hearing before an administrative separation board. In the interim, on 6 February 1998, you refused a Medical Officer’s evaluation for addiction prior to discharge. Ultimately, on 9 April 1998, you were discharged from the Marine Corps for misconduct due to drug abuse with an under Other Than Honorable (OTH) conditions characterization of service and assigned an RE-4B reentry code.

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 for a discharge upgrade and contentions that: (a) your PTSD started after witnessing a horrific helicopter accident in May 1997 killing four service members, (b) you did not have PTSD before the crash, and after the crash your mental health conditions started to develop and became worse through the rest of you time on active duty, (c) you started to use substances to block out the horrific day, and (d) your mental health conditions directly explain and contribute to the reason you were discharged. For purposes of clemency consideration, the Board noted you provided an advocacy letter but no supporting documentation describing post-service accomplishments.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 2 September 2022. The Ph.D. stated in pertinent part:

During military service, the Petitioner was diagnosed with alcohol use disorder. Problematic alcohol use is incompatible with military readiness and discipline and there is no evidence he was unaware of the potential for misconduct or not responsible for his behavior. There is no evidence of another mental health condition during military service. There is no evidence of a head injury during military service. Post-service, he has provided evidence of diagnoses of PTSD and TBI that are temporally remote to his military service and have been attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition other than alcohol use disorder, as the majority of his misconduct occurred prior to the crash, and it appears he continued to engage in similar misconduct afterwards. Additional records (e.g., mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The Ph.D. 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 a TBI that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to TBI or PTSD."

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 3.88 in conduct. Marine Corps regulations in place at the time of your discharge required a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your pattern of serious misconduct which further justified your OTH characterization of discharge.

The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. Moreover, 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. Lastly, the Board determined that illegal drug use by a Marine is contrary to Marine Corps core values and policy, renders such Marines unfit for duty, and poses an unnecessary risk to the safety of their fellow Marines. As a result, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard, the Board concluded that your misconduct and disregard for good order in discipline clearly merited your receipt of an OTH. The Board carefully considered any matters submitted regarding your character, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that insufficient evidence of an error or injustice exists to warrant 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,

10/18/2022

