



**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: 5459-22

Ref: Signature date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 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 31 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 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, 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 dated 21 September 2022, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Marine Corps Reserves (USMCR) and began a period of active duty on 18 October 1994. On 25 April 1995, you were honorably discharged after completing your initial period of active duty for training and released back to Reserve duty.

From 3 October 1997 to 5 April 1998, you missed a total of 11 mandatory USMCR drills. On 5 April 1998, you were counseled concerning unexcused absence to attend drills. You were advised that failure to take corrective action could result in administrative separation. However,

from 1 May 1998 to 3 May 1998, you missed three additional USMCR mandatory drills. As a result, on 12 September 1998, you were notified of the initiation of administrative separation proceedings by reason of unsatisfactory participation in the USMCR. On 30 December 1998, your commanding officer recommended an Other Than Honorable (OTH) discharge. Subsequently, the separation authority approved the recommendation and ordered your discharge for unsatisfactory participation in the USMCR. On 6 March 1999, you were discharged with an OTH.

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 your chain of command ignored your claims for knee pain, you were suffering from suicidal thoughts and mental health issues, and that you were assaulted by a drill instructor. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Among available documents, there is no evidence that the Petitioner was diagnosed with a mental 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 establish clinical symptoms or provide a nexus with his misconduct in the form of unexcused absences.

The AO concluded, "it is my clinical opinion that there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your unsatisfactory participation in mandatory drills, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. The Board also considered that you were warned about the consequences of continuing to miss drills. Additionally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. Finally, the Board noted you provide no evidence to substantiate 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 an upgraded characterization of service as a matter of clemency or equity. 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 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,

11/18/2022

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Executive Director

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