



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

█  
Docket No: 5477-22

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 21 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 and your response to the AO.

You originally enlisted in the Marine Corps and entered active duty on 24 April 2000. As part of your enlistment application, on 11 April 2000, you signed and acknowledged the "Statement of Understanding Marine Corps Policy Concerning Illegal Use of Drugs," and signed a second one, on 9 April 2005, as part of your reenlistment on 11 April 2005. Your pre-enlistment physical examination, on 12 April 2000, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 21 July 2000, your command issued you a “Page 11” counseling warning (Page 11) noting your disobedience of a lawful order by departing the base on family day liberty without authorization. The Page 11 expressly advised you that a failure to take corrective action may result in administrative separation or judicial proceedings. You did not submit a Page 11 rebuttal statement.

On 30 March 2001, your command issued you a Page 11 documenting your absence from your appointed place of duty. The Page 11 expressly warned you that a failure to take corrective action will result in non-judicial punishment (NJP), court-martial, or other limitation of further service. You did not submit a Page 11 rebuttal statement.

On 23 October 2001, you received NJP for unauthorized absence (UA). You did not appeal your NJP. On 15 May 2003, you received NJP failing to obey a lawful order. You did not appeal your NJP. The same day your command issued you a Page 11 counseling warning documenting your NJP. The Page 11 expressly advised you that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for administrative discharge or administrative reduction in rank. You did not submit a Page 11 rebuttal statement.

On 27 October 2003, your command issued you a Page 11 counseling warning for being the subject of an investigation dealing with a group of other Marines caught smoking marijuana at the █. The Page 11 expressly advised you that any further deficiencies in performance and/or conduct may result in disciplinary action and in processing for administrative discharge or administrative reduction in rank. You did not submit a Page 11 rebuttal statement.

On 24 October 2006, your command issued you a Page 11 documenting your alcohol-related incident while on liberty leading to your civilian arrest and being charged with DUI and reckless driving. The Page 11 expressly advised you that a failure to take corrective action and any further violations of the UCMJ may result in judicial or adverse administrative action. You did not submit a Page 11 rebuttal statement.

On 4 December 2006, you received NJP for UA and drunk driving. Your blood alcohol content at the time of your civilian DUI arrest was approximately 0.17. You did not appeal your NJP. On the same day, your command issued you a Page 11 documenting your NJP. The Page 11 expressly advised you that a failure to take corrective action and any further violations of the UCMJ may result in judicial or adverse administrative action. You did not submit a Page 11 rebuttal statement.

On 1 February 2008, you were convicted at a Special Court-Martial (SPCM) of: (a) the wrongful destruction of personal property when you smashed a laptop of a Marine E-2, (b) two separate specifications of assault against fellow Marines, and (c) the wrongful possession of anabolic steroids, a Schedule III controlled substance. You were sentenced to confinement for six months, forfeitures of pay, and a reduction in rank to the lowest enlisted paygrade (E-1).

On 4 March 2008, you commenced a period of UA that terminated after thirty days on 3 April 2008. On 22 May 2008, you were convicted at a second SPCM for your thirty-day UA. You were sentenced to confinement for sixty days and forfeitures of pay. As part of your SPCM pretrial agreement (PTA), you agreed to waive any administrative separation board, and you expressly understood that any administrative separation could be under Other Than Honorable (OTH) conditions.

On 9 September 2008, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to a pattern of misconduct, misconduct due to the commission of a serious offense, and misconduct due to drug abuse. Per the terms of the SPCM PTA, you waived your right to request an administrative separation board. Ultimately, on 14 November 2008, you were discharged from the Marine Corps for misconduct with an OTH characterization of service and assigned an RE-4 reentry code.

On 7 July 2011, the Naval Discharge Review Board denied your application for discharge upgrade relief.

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 change to your narrative reason for separation along with your contentions that: (a) you suffered from PTSD, (b) your post-deployment health assessments identified several troubling symptoms suggesting you suffered from a mental health condition at the time of your misconducts, (c) rather than your misconduct being conscious wrongdoing you believe that it was actually periods of temporary insanity bought on by PTSD after returning from active duty service, and (d) you do not believe that the acts were deliberate or intentional wrongdoing, but believe that they were caused directly by the symptoms of your disability you experienced on active duty and for which you didn't receive treatment. 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 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 22 September 2022. The Ph.D. stated in pertinent part:

Post-service, he has received a diagnosis of combat-related PTSD from the Department of Veterans Affairs (VA). Unfortunately there is insufficient evidence that a nexus exists between his mental health diagnosis and his misconduct, as he displayed numerous behavioral infractions prior to his deployments. Additionally, it is difficult to attribute his possession of large quantities of steroids to symptoms of PTSD. 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 Ph.D. concluded, “it is my considered clinical opinion there is post-service evidence of PTSD that may be attributed to military service. There is insufficient evidence of another mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to PTSD or another mental health condition.”

In response to the AO, you provided further arguments in support of your case along with additional medical evidence.

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 pattern of 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 3.37 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 possession and/or use by a Marine is contrary to Marine Corps core values and policy, 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. 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,

10/25/2022

