



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

█  
Docket No. 5709-22

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 limitations 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 13 March 2023. 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 service 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)/mental health condition (MHC) (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. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the United States Marine Corps and commenced a period of service on 13 January 1987. On 29 January 1988, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 86, for a period of unauthorized absence (UA). You did not appeal this NJP. On 22 February 1988, you were formally counseled regarding your failure to comply with orders. You were afforded an opportunity to make a statement in response but elected not to make a statement. On 3 June 1988, you were formally counseled regarding drinking in the barracks. You again elected not to make a statement.

On 9 November 1988, you received your second NJP for violating UCMJ Article 86, for two periods of UA totaling one day, and Article 123(a), for writing worthless checks. You were

formally counseled for this misconduct and did not appeal this NJP. On 12 December 1988, the █, found you guilty on 21 counts of writing worthless checks. You were sentenced to restitution and probation. On 14 December 1988, you were found guilty at your third NJP of violating UCMJ Article 123 (a), for failure to pay just debts by issuing over \$900 in worthless checks. You did not appeal this NJP.

On 19 April 1989, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to pattern of misconduct. You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. Ultimately, in May 1989, you were discharged from the Marine Corps for misconduct with an Other Than Honorable (OTH) characterization of service and assigned an RE- 4 reenlistment code.

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire to upgrade your characterization of service, (b) your contention that you were sexually harassed by the wife of your First Sergeant, and (c) the impact that such harassment had on your conduct during service. For purposes of clemency and equity consideration, the Board noted you did not provide evidence of post-service accomplishments or character letters in support of your request.

In your petition, you contend that you were the victim of sexual harassment by the wife of your First Sergeant, which contributed to your misconduct. You assert that you were unaware that she was the wife of your superior when you engaged in a relationship with her and that she took advantage of your youth and inexperience. 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 30 January 2023. The Ph.D. noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited a clear pattern of psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, as it is not clear how disobedience and financial mismanagement would be related to sexual assault/harassment by the wife of a superior. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The Ph.D. concluded, "it is my clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to a mental health condition or sexual assault/harassment."

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about the sexual

harassment that you suffered during your service. Specifically, the Board felt that your misconduct, as evidenced by your three NJPs and civilian conviction, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved multiple period of UA and numerous counts of writing bad checks. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that such misconduct is contrary to Marine Corps values and policy and calls into question your character for truthfulness. In making this determination, the Board concurred with the advisory opinion that there was no evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge.

The Board failed to see how your disobedience and financial mismanagement could be related to sexual harassment by the wife of a superior. Further, the Board highlighted that, per your statement, you did not even engage in this relationship until after you committed the misconduct for which you were separated. The Board found that your active duty 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 otherwise not be held accountable for your actions. As a result, the Board determined your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization.

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. 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 granting you the relief you requested or granting relief 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 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,

3/20/2023

