



**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: 6073-22

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 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 19 December 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 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 and your response dated 7 December 2022.

You enlisted in the United States Marine Corps and commenced a period of service on 6 August 1989. Upon entry into the service, you disclosed significant pre-service marijuana use on your Enlistment Application (DD Form 1966/3).

On 22 August 1991, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 86 (2 specifications), for failure to go at the prescribed time to your appointed place of duty, Article 91 (2 specifications), for insubordinate conduct towards a noncommissioned officer and willfully disobeying a lawful order given by a noncommissioned officer, Article 134, for dishonorably failed to pay just debt to a taxi cab driver, and Article 134, for drunk and dishonorable conduct. On 12 June 1992, you received your second NJP for

violating UCMJ Article 86, for a 12 day period of unauthorized absence (UA). On 3 September 1992, you received your third NJP for violating UCMJ Article 111, for driving on base while under the influence of alcohol. You did not appeal any of these NJPs.

On 14 September 1992, your command initiated administrative separation processing based on misconduct, commission of a serious offense. You were notified that the least favorable characterization of service would be Other than Honorable (OTH). You acknowledged and waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. After the Separation Authority directed your administrative discharge with an OTH characterization by reason of misconduct due to commission of a serious offense, you were so discharged on 2 October 1992 and issued an RE-4 reentry code.

You previously sought relief through the Board for Correction of Naval Records and were denied relief on 27 June 2018.

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 assertion that you were self-medicating with alcohol due to early symptoms of Bipolar Disorder, and (c) your contention that your misconduct was caused by your mental health condition. For purposes of clemency and equity consideration, the Board noted you provided documentation related to your Social Security Benefit information and articles on Bipolar Disorder.

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 8 November 2022. The Ph.D. noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. 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. An Adjustment disorder diagnosis indicates difficulty adapting to a stressor, such as military service, and typically resolves when the individual is no longer in the military. Post-service, he has submitted evidence of a mental health condition that is temporally remote to his military service and appears unrelated. While the “typical” onset for bipolar disorder is adolescence/young adulthood, there is no evidence the Petitioner’s disorder onset during this time frame. His in-service misconduct appears to be consistent with his diagnosed alcohol use disorder (AUD), rather than evidence of another mental health condition incurred in or exacerbated by military service. 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 insufficient evidence of a mental health condition that may be attributed to military service, other than an AUD. There is insufficient evidence his misconduct could be attributed to a mental health condition, other than an AUD."

In response to the AO, you provided a personal statement questioning the accuracy of the AO.

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. Specifically, the Board felt that your misconduct, as evidenced by your three NJPs, outweighed these mitigating factors. The Board considered the seriousness of your repeated misconduct and the fact that it involved driving under the influence of alcohol while on base. 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 self-medicating due to the onset of Bipolar Disorder. 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 your conduct was contrary to the Marine Corps values and policy, renders such Marine unfit for duty, and poses an unnecessary risk to the safety of fellow Marines. In making this determination, the Board concurred with the advisory opinion that your in-service misconduct appears to be consistent with your diagnosed alcohol use disorder (AUD), rather than evidence of another mental health condition incurred in or exacerbated by military service. While the Board acknowledged that the onset for Bipolar Disorder typically occurs during adolescence/young adulthood, they felt that there was insufficient evidence that your disorder onset occurred during this timeframe. The evidence you provided is temporally remote to your military service and appears unrelated. The Board determined that you were appropriately referred for psychological evaluation and properly evaluated during your enlistment, which did not result in a mental health diagnosis, rather, resulted in your diagnosis of AUD. 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 of service.

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. While the Board carefully considered your medical evidence, 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 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,

1/11/2023

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Executive Director

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