



**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: 6609-22  
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 22 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 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 considered an advisory opinion (AO) furnished by a qualified mental health provider and your response to the AO.

You enlisted in the Marine Corps and entered active duty on 27 June 2001. Your pre-enlistment physical examination, on 23 May 2001, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 7 February 2002, you received non-judicial punishment (NJP) for larceny from the Seven Day Store a █, and for making a false official statement. You did not appeal your NJP.

On 25 October 2002, you negotiated and signed a pretrial agreement (PTA). The PTA stated you agreed to accept a Summary Court-Martial (SCM) and plead guilty to certain charges in exchange for the charges to be adjudicated at an SCM in lieu of at a Special Court-Martial. You also agreed in the PTA to waive any administrative separation board related to the SCM charges, as well as agreed to enter into a stipulation of fact.

On 18 November 2002, pursuant to your guilty pleas, you were convicted at a SCM of unauthorized absence, making a false official statement, three separate specifications of larceny, and for the unlawful entry into a barracks room of another Marine. You were sentenced to forfeitures of pay, a reduction in rank to the lowest enlisted paygrade (E-1), and confinement for thirty days.

On 18 November 2002, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to the commission of a serious offense. Per the terms of the PTA, you waived your rights to request an administrative separation board. Ultimately, on 10 January 2003, you were separated from the Marine Corps for misconduct with an Other Than Honorable (OTH) discharge characterization and assigned an RE-4 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 to upgrade your characterization of service and change your narrative reason for separation. You contend that: (a) you suffered an injustice when you were discharged, (b) you suffered from service-connected mental health issues, and (c) this board has the opportunity to reverse the error and injustice committed against you for making mistakes at the end of your career because you were left to reach a breaking point. For purposes of clemency and equity consideration, the Board noted you provided supporting documentation describing post-service accomplishments, an advocacy letter, and medical documentation.

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 7 November 2022. The Ph.D. stated in pertinent part:

The Petitioner contends that he suffered from mental health conditions while in service which may have mitigated the circumstances of his discharge. There is evidence that he was diagnosed with Major Depressive Disorder and prescribed psychotropic medication while in service. He was also diagnosed with a Personality Disorder as per the recommendation for administrative discharge dated November 19, 2002. Larceny, making false official statements and unlawful entry are not common behaviors associated with one who suffers from a depressive

disorder, nor are they commonly observed symptoms or typical behavioral changes indicative of a diagnosable mental health condition. He has provided a post-service resume and character reference from a supervisor as evidence. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. 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 sufficient evidence of a mental health condition that existed during military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

In response to the AO, you provided additional arguments that in opposition to the AO conclusion that your misconduct could not be attributed to a mental health condition.

After thorough review, the Board concluded these 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 any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no 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, even under the liberal consideration standard the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. 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 serious misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record clearly reflected that your misconduct was willful and intentional, and demonstrated you were unfit for further service. Moreover, the Board concluded that the criminal offenses of larceny, unlawful entry, and making false official statements would not be excused or mitigated by mental health conditions even with liberal consideration. The Board also concluded 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.

Additionally, 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 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. Lastly, 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. Accordingly, the Board determined that there was no impropriety or inequity in your discharge

and corresponding narrative reason for separation, and the Board concluded that your serious misconduct clearly merited your receipt of an OTH with a narrative reason of “misconduct.” The Board carefully considered any matters submitted regarding your character, post-service conduct, and personal/professional accomplishments, however, 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, changing your narrative reason for separation, 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,

1/8/2023

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Executive Director

Signed by: █