



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

■  
Docket No: 6892-22  
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 4 January 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 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

After a period of Honorable service in the Army, you enlisted in the Marine Corps and began a period of active duty on 14 March 1989. You subsequently completed this enlistment with an Honorable characterization of service on 13 December 1992 and immediately reenlisted.

On 15 May 1995, you were convicted by a special court-martial (SPCM) of wrongful use of amphetamine/methamphetamine and two specifications of unauthorized absence (UA) totaling seven days. As punishment, you were sentenced to confinement, reduction in rank, and a Bad

Conduct Discharge (BCD). The BCD was subsequently approved at all levels of review and, on 24 October 1996, you were so discharged.

Post-discharge, you petitioned the Naval Discharge Review Board (NDRB) for an upgrade to your characterization of service. The NDRB denied your request on 16 March 1998.

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 change your discharge character of service and contentions that you suffered from undiagnosed PTSD in service after a member from your platoon died following a difficult physical training exercise. You further contend this incident caused you to use drugs that led to your discharge from the Marine Corps. 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, a qualified mental health professional reviewed your request and provided the Board with an AO on 8 November 2022. The AO stated in pertinent part:

The Petitioner contends that he suffered from undiagnosed PTSD in service after a member from his platoon died following a difficult physical training exercise. He submitted partial paperwork from the Department of Veterans Affairs (VA) compensation and pension decision rating whereby he was found to be 70% service connected for PTSD. He also submitted partial progress notes (three dates in June 2022) from VA Southern Nevada Healthcare System where he was evidently seen in the context of therapy for PTSD. It is possible that the counseling given him in November 1993 was in reference to a fallen Marine (as per his claim), and that he suffered from PTSD as a result of that experience. Unauthorized absences, could be symptoms of PTSD, however methamphetamine use and disobedience of a lawful order, are not common symptoms, results, or observed behaviors of PTSD. There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Additional records (e.g., active duty medical records, 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 AO concluded, "it is my considered clinical opinion there is sufficient 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your SPCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved a drug offense. The Board determined that illegal drug use by a Marine is contrary to military core values and policy, renders such Marines unfit for duty, and poses an unnecessary risk to the safety of their fellow

Marines. Further, the Board considered the likely negative effect your misconduct had on the good order and discipline of your unit. Additionally, the Board concurred with the AO and determined that while there is sufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence that your misconduct could be attributed to a mental health condition. The Board considered that you were awarded your BCD as a result of a SPCM conviction and you were represented by legal counsel during the proceedings. As a result, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your BCD. As a result, the Board decided your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD. While the Board carefully considered the evidence you submitted in mitigation, 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,

1/18/2023

