



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

█  
Docket No. 7034-22  
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 20 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 the 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 to 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) of a qualified mental health provider along with your response to the AO.

You enlisted in the Marine Corps and began a period of active duty on 13 June 2000. You received your first nonjudicial punishment (NJP), on 22 August 2001, for violations under the Uniform Code of Military Justice (UCMJ) of Article 134 by wrongfully possessing and using the identification card of a Marine over the age of 21, knowing the same to be false, and of Articles 90 and 92, for willfully disobeying a superior commissioned officer and failing to obey a lawful order given by an officer by drinking under the age of 21. On 6 December 2002, you were administratively counseled for disrespectful conduct toward a noncommissioned officer when you proceeded to walk away without returning after having received an order from a corporal. You accepted a second NJP, on 24 March 2003, for violations of Articles 86, 92, and 134, due to an alcohol related incident which resulted when you left your appointed place of duty to go to

██████████, without proper authority, and acted inappropriately after consuming alcohol and committing an offense of driving while intoxicated. Your pattern of misconduct continued, evidenced by additional administrative counseling you received, on 5 August 2003, for disrespectful conduct toward an officer and toward the Sergeant of the Guard.

This behavior culminated in your trial by Special Court-Martial on 10 June 2004, at which you were found guilty pursuant to your pleas of eight offenses under UCMJ, to include: Article 91, for assault of a noncommissioned officer in the execution of his office, by wrestling with him; Article 112a, for wrongful use of cocaine; two specifications under Article 134, for willfully and wrongfully exposing your penis to public view in an indecent manner while at your place of work; Article 117, for wrongfully using provoking speech and gestures toward a corporal, as a lesser included offense of the original charge under Article 134 of wrongfully communicating a threat, to which you pled and were found not guilty; and, three specifications of Article 128, assault, each as a lesser included offense of the charged offenses of indecent assault to which you pled and were found not guilty. The assault offenses to which you pled and were found guilty included: grabbing a lance corporal and rubbing your groin against his body; pushing a lance corporal down, kissing him on the cheek, and rubbing your groin on his leg; and, putting your arm around a corporal, hugging him, and making humping motions. You were sentenced to reduction to E-1, confinement for 60 days, and a Bad Conduct Discharge (BCD). You requested clemency from the Naval Clemency and Parole Board seeking remission of the punitive discharge on the basis that it was too severe; however, this request was denied. The findings and sentence of your SPCM were affirmed upon appellate review, your BCD was ordered executed, and you were discharged on 17 May 2005.

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 punitive discharge to “Honorable” and change your narrative reason for separation and separation code from “Court-Martial” to “Secretarial Authority” as well as your contentions that your post-service character merits consideration of clemency and that your misconduct should be excused as attributable to your experience of post-traumatic stress disorder (PTSD), which you “believe” you developed as a result of your combat experiences while serving 8 months on the front lines of contingency operations in ██████████. For purposes of clemency and equity consideration, the Board noted you provided five character letters from friends, co-workers, employees, and people professionally familiar with your business efforts in assisting transitioning veterans find beneficial employment and giving back to the veteran community through your support of non-profit organizations.

Because you also contend that post-traumatic stress disorder (PTSD) affected your discharge, the Board considered the AO. The AO stated in pertinent part:

There is no evidence he was diagnosed with a mental health condition in military service. He has provided no medical evidence in support of his claims. Although he has provided a statement of support regarding his combat to deployment to ██████████, there is insufficient evidence to establish clinical symptoms of PTSD during military service or a nexus with his misconduct. His first NJP happened prior to 9/11/2001, and could not be attributed to PTSD. While disrespectful conduct could potentially be indicative of unrecognized symptoms

of PTSD, it is difficult to attribute indecent exposure, cocaine use, and assault consummated by battery to symptoms of PTSD. There is no evidence he was unaware of his misconduct or not responsible for his behavior. 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 AO concluded, "it is my considered clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD."

In response to the AO, you submitted additional arguments in support of your application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO in regard to the overall lack of evidence, medical or otherwise, in support of your purported PTSD. To this extent, the Board noted that the totality of evidence you submitted in support of your experience of PTSD consisted of argument made by your legal counsel in reference to your SPCM charges compared against several psychological studies, and letter from a fellow service member, which attests only to your participation in combat operations and subsequent "out of character" behavior without any discussion of specific traumatic experiences to which you may have been exposed and without observation of any specific symptoms or behaviors of PTSD other than your misconduct itself. While the policy guidance in the Kurta memo provides that the veteran's testimony alone may establish the existence of a condition or experience which existed during or was aggravated by military service, the Board observed that you did not submit a personal statement describing any combat-related trauma or your experience of any subsequent mental health symptoms or behaviors, even with respect to the circumstances of your misconduct. Rather, your counsel's brief relates that you "believe" your unspecified experiences during your 8-month combat tour on the front lines in Afghanistan precipitated your purported PTSD and later misconduct. Based on these factors, the Board found there is insufficient evidence your misconduct could be attributed to PTSD.

The Board favorably considered the additional evidence you submitted in support of your contention that your post-discharge character merits consideration of an upgraded character of service on the basis of clemency, in that you have strived to demonstrate that you are a better man than your discharge paperwork reflects. In addition to starting your own company to assist with veteran employment and strengthen the Nation's workforce, the Board noted that your employees regard you highly and observe that you have a genuine interest in their lives and in helping your customers. They also described that you give back to the community through some form of support of ██████████ and the ██████████ foundations. However, the Board observed that the majority of your letters of support read as vague, general recommendations without reference to your misconduct or the perceived severity of your punitive discharge, whereas the only letter which addressed your post-discharge character in reference to your in-service misconduct or claim of PTSD in any respect was that of the service member with whom you served in combat. As a result, the Board concluded your conduct constituted a significant

departure from that expected of a service member and continues to warrant a BCD. While the Board commends your post-discharge accomplishments and good character, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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 the 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 is attached 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,

1/31/2023

█

Executive Director

Signed by: █