



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

██████████  
Docket No. 8004-22  
2696-18  
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 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 3 April 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 an advisory opinion (AO) from a qualified mental health professional, dated 2 March 2023, and your response to the AO.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Marine Corps Reserve and completed an initial period of active duty training on 29 August 97. Subsequently, you transferred to your reserve unit. Between 16 May 1998 and 13 June 1999, you received multiple counselings due to accumulating 22 unexcused absence from schedule drills. As a result, your Commanding Officer (CO) notified you by certified mail of his intention to recommend that you be separated from the Marine Corps Reserves due to failure to participate in scheduled drills. You failed to acknowledge or return the notification of separation, which resulted in you waiving your rights. Your CO forwarded your package to the separation authority (SA) recommending your discharge due to failure to participate, with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation and, on or about 6 July 1999, you were so discharged.

You previously applied to this Board for a discharge upgrade but were denied on 22 May 2019. The Board determined the mitigation evidence you submitted in support of your request was insufficient to offset the seriousness of your misconduct.

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 discharge, change your narrative reason for separation, separation code, and reenlistment code. The Board also noted your contentions that you incurred a mental health condition during your military service, you could not fulfill your reserve obligation due to your mother's illness, you were treated unfairly due to your hardship and since discharge, you become a loving father, you were a reliable member of the community, and you completed various state-funded programs including several substance abuse programs. For purposes of clemency and equity consideration, the Board noted you provided advocacy letters, a personal statement, but failed to provide supporting documentation describing post-service accomplishments. The Board also noted you are currently incarcerated.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 2 March 2023. The AO stated in pertinent part:

There is no evidence that Petitioner 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. He has provided no medical evidence in support of his claims. Unfortunately, the available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. While personal stressors can contribute to challenges in attending drill, they do not inherently mean that a mental health condition has developed. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his nonparticipation) may aid in rendering an alternate opinion.

The AO 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 separation may be attributed to a mental health condition."

In response to the AO, you submitted a personal statement that provided additional information regarding the circumstances of your case.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your failure to attend scheduled drill, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded it showed a complete disregard for military authority and regulations. Further, the Board noted that there is no evidence in your record, and you submitted none, to support your contentions. Additionally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a MHC. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence you provided 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. 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 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,

4/17/2023

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Executive Director  
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