



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

█  
Docket No. 9074-22  
Ref: Signature Date

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█  
█  
Dear █

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 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 10 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 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 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) from a qualified mental health professional and your response to the AO.

You enlisted in the U.S. Marine Corps and began a period of active duty on 23 April 1996. After completing your first enlistment, on 23 June 2003, you reenlisted and commenced another period of active duty.

Your record contains multiple administrative remarks in your official military personnel file (OMPF) due to your failure to pass physical fitness tests. Additionally, it documents your participation in Operation Swift Freedom, Operation Enduring Freedom, and Operation Iraqi Freedom, and Operation.

On 19 August 2005, while in theater at █ Iraq, you were found guilty at a special court-martial (SPCM) of Charge I: wrongfully attempting to ship two weapons out of the United States █ for personal retention or

control, of Charge II: three (3) specifications of wrongfully violating a general order by wrongfully purchasing, possessing, and selling privately owned weapons in the ██████████ ██████████ by wrongfully possessing alcohol in the ██████████ ██████████ and by wrongfully possessing sexually explicit images in the ██████████ ██████████ Charge III: five (5) specifications of military property of the United States-Loss, damage, destruction, or wrongful disposition, by wrongfully disposing of one (1) case of 9-mm ammunition by trading it to a civilian for one (1) case of AK-47 ammunition, by wrongfully selling to a civilian named ██████████ ten (10) cases of 9-mm and two cases of 5.56-mm ammunition, by wrongfully selling to a civilian named ██████████ seven (7) cases of 9-mm and three (3) cases of 5.56-mm, and one case of Squad Automatic Weapon (SAW) ammunition, by wrongfully selling to a civilian named ██████████ four (4) cases of 9-mm ammunition, by wrongfully disposing of some amount of 9-mm ammunition and some amount of 5.56-mm ammunition by trading it to a civilian for one PKM (Pulemyot Kalashnikova Machine gun), and Charge IV: wrongfully appropriating two (2) Small Arms Protective Inserts (SAPI plates). You were sentenced to a Bad Conduct Discharge (BCD), confinement for nine (9) months, forfeiture of \$823.00 pay per month for eight (8) months, a fine of \$3,292.00 and to be reduced in rank to E-1.

In October 2005, you received a mental health evaluation which diagnosed chronic PTSD with an onset of June 2002. On 7 November 2006, your sentenced was affirmed on appellate review. On 15 February 2007, you were discharged with a BCD based on your court-martial conviction.

The Board carefully weighed 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 and your contentions that: (1) you incurred PTSD during military service, (2) you made a mistake after 10 years of meritorious service and good conduct, (3) you paid for your mistake and have redeemed yourself, (4) you are a productive member of society who has obtained a Bachelors and two Masters Degrees with a high grade point average, (5) you currently work with autistic and special needs children, (6) the mistakes you made did not hurt anyone except for yourself, and (7) you provide scholarships to high school seniors annually to help with their post-secondary educational goals. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

Based on your assertions that you incurred PTSD concerns during military service, which might have mitigated the circumstances of your discharge, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

During military service, the Petitioner was appropriately referred for psychological evaluation and properly evaluated. He was diagnosed with chronic PTSD with an onset prior to his misconduct, and this knowledge was available for consideration throughout the review of his separation process. It is possible that wrongful possession of alcohol could be considered as self-medication for symptoms of PTSD. Unfortunately, theft and wrongful trade or sale of weapons, armor, and ammunition are not behaviors typically indicative of symptoms of PTSD. 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 in-service evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute most of his misconduct to PTSD.”

In response to the AO, you submitted a personal statement that provided additional information regarding the circumstances of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

After a 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 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 considered the likely negative effect your conduct had on the good order and discipline of your command. Additionally, the Board concurred with the AO that, although there is in-service evidence of a diagnosis of PTSD that may be attributed to military service, theft and wrongful trade or sale of weapons, armor, and ammunition are not behaviors typically indicative of symptoms of PTSD. Therefore, the Board agreed that there is insufficient evidence to attribute most of your misconduct to PTSD. 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 carefully considered the evidence you submitted in mitigation, even in light of the Wilkie memo, after applying liberal consideration, and after 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 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,

4/24/2023

