



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

█  
Docket No. 9160-22

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 limitations 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 27 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 service 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)/mental health condition (MHC) (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 and your response to the AO.

You enlisted in the United States Marine Corps and commenced a period of service on 22 December 1983. On your enlistment application, you acknowledged pre-enlistment experimental marijuana use and an arrest for disorderly conduct. On 9 February 1984, your command was notified that you had a positive urinalysis from December 1983. The command elected not to take any action, as the positive drug test was around the time of your initial enlistment. However, you were notified of the Marine Corps drug policy.

On 7 August 1984, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 91, for the use of disrespectful language. On 12 February 1986,

you received your second NJP for violating UCMJ Article 128, for two specifications of assault. On 30 May 1986, you received your third NJP for violating UCMJ Article 81, for conspiracy to wrongfully appropriate a stereo, and Article 121, for wrongful appropriation of a stereo. You did not appeal any of these NJPs. During this timeframe, you were also formally counseled on four separate occasions for issues regarding poor judgment, lack of professionalism, professional deficiencies, and for driving while intoxicated (DUI).

On 24 July 1986, you were found guilty at Summary Court Martial (SCM) of wrongfully driving on the suspended list after having been arrested for DUI. You were sentenced to reduction in rank to E-1, forfeitures of pay, and 15 days confinement. On 15 September 1986, your command initiated administrative separation (ADSEP) proceedings by reason of misconduct due to pattern of misconduct. You elected your right to consult with qualified counsel and your right to an administrative separation board. On 17 October 1986, after presenting your case with the assistance of qualified counsel, the ADSEP Board found that the allegations were supported by the evidence and recommended your discharge from the service with an Other Than Honorable (OTH) characterization of service. Prior to your separation, you were medically evaluated and denied mental health symptoms. On 4 December 1986, you were discharged from the Marine Corps with an OTH and assigned an RE-4 reenlistment code.

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire to upgrade your characterization and change your narrative reason for separation and reenlistment code, (b) your contention that you were struggling with undiagnosed mental health issues caused by racial harassment, (c) the impact that your mental health had on your conduct during service, and (d) your assertion that you were self-medicating with alcohol. For purposes of clemency and equity consideration, the Board noted that you provided documentation related to your post-service accomplishments and character letters.

In your request for relief, you claim that you incurred Post Traumatic Stress Disorder (PTSD), due to the racial discrimination and harassment that you suffered while on active duty, which contributed to your alcohol abuse and misconduct. In support of your contentions, you submitted an August 2022 evaluation from a civilian psychologist, Department of Veterans Affairs (VA) treatment progress notes describing treatment for symptoms of PTSD. You also submitted an October 2021 Disability Benefits Questionnaire for the diagnosis of PTSD, which listed the traumatic precipitant as being “called racial epithets after being assigned to fire duty.... The racial epithets were accompanied by physical assaults.” You also supplied evidence of VA service connection for PTSD for treatment purposes and excerpted statements from civilian mental health clinicians describing the current interference of PTSD symptoms with your family relationships. 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 16 March 2023. The Ph.D. noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. Post-service, a civilian provider has diagnosed him with PTSD and MDD attributed to military service, and the VA has granted service connection for PTSD. It is possible that some of his misconduct could be attributed to undiagnosed symptoms of PTSD or depression. Although he reported an alcohol

related incident pre-service, it is plausible that his alcohol use may have increased and become more problematic in the context of stressors during military service. It is possible that assault and disrespectful language could be attributed to unrecognized symptoms of irritability associated with PTSD. The Petitioner acknowledged substance use pre-enlistment and had a positive urinalysis prior to the period in which he incurred PTSD and MDD, which cannot be attributed to either diagnosis. As he denies the charges of theft and cocaine usage, that misconduct cannot be attributed to a mental health condition.

The Ph.D. concluded, “it is my clinical opinion there is post-service evidence from the VA and a civilian provider of a diagnosis of PTSD that may be attributed to military service. There is post-service evidence from a civilian provider of another mental health condition that may be attributed to military service. There is post-service evidence to attribute some of his misconduct to symptoms of PTSD or another mental health condition.

The Board considered your reply dated 13 April 2023. You assert that all, not just some, of the misconduct that formed the basis of your separation was due to your undiagnosed mental health issues. You argue that the pre-service misconduct was waived upon entry into the service and was not the basis for separation, therefore it is not proper for consideration by the Board. In reference to the charges involving theft and cocaine usage, you contend that you either didn’t commit those crimes or do not remember committing those acts because the stress and harassment caused by your command, which caused your mental health issues and ultimately changed how your brain works. You highlight that the Marine who implicated you in the theft later recanted his statement and that you do not remember using cocaine, but explain that you were drinking heavily at the time and could have unknowingly ingested the illegal substance. You also highlight that all of your misconduct in-service occurred while you were assigned to Charlie Company, where you suffered racial harassment. Finally, you assert that had Marine Corp policy required a PTSD screening prior to your involuntary separation, as the Corps now requires, you would have been properly diagnosed with PTSD and other mental health issues prior to your discharge. After reviewing your response, the AO remained unchanged.

After thorough review, the Board concluded the 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 mental health and the possible adverse impact your mental health had on your conduct during service. Specifically, the Board felt that your misconduct, as evidenced by your three NJPs and SCM, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved assault and a DUI. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that such misconduct is contrary to Marine Corps values and policy, renders such Marine unfit for duty, and poses an unnecessary risk to the safety of fellow service members.

In making this determination, the Board concurred with the advisory opinion that there is no evidence that you were diagnosed with a mental health condition during service, and that your post-service diagnosis does not account for or mitigate all of the misconduct that formed the basis of your discharge. The Board felt that your post-service diagnosis is temporally remote to your service. Throughout the disciplinary process, you did not raise any concerns related to

mental health that would have warranted a referral for evaluation, nor did you raise any claims of harassment. Instead you discuss your significant alcohol abuse, so much so that you attribute most of your misconduct to drinking or being drunk at the time the misconduct was committed. The Board was particularly concerned with the fact that you were driving while in a suspended status after being arrested for DUI and totaling your car. Finally, the Board noted that on your separation physical, you denied any mental health issues. The Board concluded that at least some of your misconduct was not due to mental health-related symptoms, rather, was intentional and demonstrated you were unfit for further service. As a result, the Board determined your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization. While the Board commends your post-discharge accomplishments and 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. 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 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,

5/2/2023

