



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

█  
Docket No. 9240-22  
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 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 1 May 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)/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, dated 10 March 2023. Although you were provided an opportunity to comment on the AO, you chose not to do so.

You entered active duty with the Marine Corps on 27 December 1989. On 19 June 1990, you received non-judicial punishment (NJP) for purchasing alcohol for minors. On 21 November 1990, you received a warning counseling due to your lack of respect for seniors and disobeying orders. On 9 December 1990, you deployed in support of █

On 2 August 1991, you received NJP for having a female in the barracks after hours and wrongfully appropriating another Marine's personal vehicle. On 12 August 1991, you were counseled on

establishing a pattern of misconduct due to frequent involvement with military authorities. On 31 December 1991, you received an additional NJP for having a female in the barracks after hours. As a result, you were notified of pending administrative separation action by reason of misconduct due to minor infractions. After electing to make a written statement, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to minor infractions, with an Other Than Honorable (OTH) characterization of service. In the meantime, on 26 March 1992, you received NJP for burglary and larceny in the amount \$150.00 by entering another Marine's room. The SA ultimately approved the CO's recommendation and, on 15 April 1992, you were discharged by reason of misconduct minor infractions with an OTH.

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 and contentions that you incurred PTSD and a mental health condition during military service, which might have mitigated your discharge character of service, you served during wartime, and you excelled in your duties and your misconduct was due to your struggles to re-adjust to a normal life style. 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 10 March 2023. The mental health professional stated in pertinent part:

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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. Although he did have a deployment to the ██████████ his misconduct preceded the deployment and continued after his return. 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 clinical opinion there is insufficient evidence of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition."

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 four NJPs, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative effect it had on the good order and discipline of the command. Further, the Board concurred with AO that there is insufficient

evidence of a mental health condition that may be attributed to your military service or misconduct. The Board considered that the offense of burglary and bringing unauthorized women into your barracks room are not the type of offenses normally associated with PTSD or other mental health conditions. Additionally, the Board noted that there is no evidence in your record, and you submitted none, to support your contentions. Contrary to your assertion, the Board noted you committed misconduct prior to your deployment; misconduct that continued even while you were being processed for separation. Finally, the Board noted that you were warned on multiple occasions that your continued misconduct may result in an OTH and you continued to commit misconduct. 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. Even in light of the Wilkie Memo and reviewing the record liberally and 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,

5/11/2023

