



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

█  
Docket No. 3958-23

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 12 January 2024. 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 13 August 1990. On your enlistment application, you acknowledged preservice drug use. You had a continuous period of Honorable service from 13 August 1990 to 17 June 1998, which is noted on Block 18 of your Certificate of Release or Discharge from Active Duty (DD Form 214). During this timeframe, you were taken to Captain's Mast twice. On 16 March 1992, you were found guilty at non-judicial punishment (NJP) of violating Uniform Code of Military Justice (UCMJ) Article 92, for disobedience by having alcohol in the barracks. On 20 July 1992, you received your second NJP for violating UCMJ Article 92, for driving under the influence of alcohol and

refusing to take a breathalyzer test. You were formally counseled due to this misconduct and notified that further misconduct could lead to your administrative separation. You did not appeal either of these NJPs. In August 1992, you successfully completed Level III In-patient Alcohol Treatment for alcohol use disorder. From 19 September 1994 to 7 November 1994, you participated in shore-base Operation “Uphold Democracy” in █, as part of █. You reenlisted for a final period of active duty on 18 June 1998.

In September 2001, you were formally counseled related to your unauthorized use of government computers and notified that further misconduct could lead to your administrative separation. On 29 November 2001, you were found guilty at your third NJP for violating UCMJ Article 112(a), for the wrongful use of marijuana.

On 23 January 2002, you were notified that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. You elected your right to consult with qualified counsel and present your case at an administrative separation (ADSEP) board. On 9 April 2002, the ADSEP Board convened and, by a vote of 3 to 0, found that the basis for separation was met and recommended your separation with an Other Than Honorable (OTH) characterization of service. On 11 June 2002, prior to your separation from service, you were found guilty in civilian criminal court resulting in two felony convictions for possession with intent to distribute cocaine and manufacture of cocaine, and two misdemeanor convictions for possession of marijuana and possession of drug paraphernalia. On 17 June 2002, you were discharged from the Marine Corps due to your misconduct with an OTH characterization of service and assigned an RE- 4B reentry 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 of service and change your narrative reason for separation, (b) your assertion that you were struggling with undiagnosed mental health conditions during your service, and (c) the impact that your mental health had on your conduct. For purposes of clemency and equity consideration, the Board noted that you provided documentation related to your post-service accomplishments and a character letter.

In your request for relief, you contend that you incurred PTSD from a 1994 deployment to █, during which you were tasked with handling human remains. You described additional traumatic precipitants following the █ deployment, including cleaning up human remains following a shipboard suicide and responding to other fatalities. You also noted the stresses related to the premature birth of your twins and marital discord, which ultimately resulted in divorce. In support of your request, you supplied Department of Veterans Affairs (VA) records including a diagnosis of Bipolar I Disorder from October 2023. 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 15 November 2023. The Ph.D. noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, other than alcohol use disorder. Post-service, the Petitioner has received a diagnosis of a mental health condition that is temporally remote to

military service and appears unrelated. There is no evidence of diagnosis of PTSD. His in-service misconduct appears to be consistent with alcohol and substance use disorder, rather than evidence of another mental health condition incurred in or exacerbated by military service, particularly given statements regarding pre-service behavior that continued during military service. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may contribute to an alternate opinion.

The Ph.D. concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis 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, other than alcohol or substance use disorder."

The Board considered your response to the AO in which you argue, among other things, the language of the Kurta memo and you were not only suffering from a substance abuse disorder, but from an underlying mental health condition as well. The Ph.D. reviewed your rebuttal statement and, as no new medical evidence was submitted, left the original opinion 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 undiagnosed mental health issues and the possible adverse impact on your service. Specifically, the Board felt that your misconduct, as evidenced by your NJPs and your civilian felony and misdemeanor convictions, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved serious drug offenses. 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 illegal substance abuse 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 was insufficient evidence that you suffered from any type of mental health condition while on active duty, other than alcohol abuse disorder, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. There was nothing in your official service records that indicated you sought mental health treatment, or that you raised such symptoms or concerns during your NJPs or your civilian criminal trial. Further, the Board agreed with the AO that your post-service diagnosis is temporally remote to your service, and fails to draw a sufficient nexus to your underlying misconduct. As a result, the Board concluded that your in-service misconduct was not due to mental health-related symptoms. The Board determined the record clearly reflected that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. The Board concluded that your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization.

Therefore, while the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, even in light of the Kurta, Hagel, and Wilkie Memos 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. 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,

1/23/2024

