



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

No. 5961-23  
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 29 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 previously submitted an application to the Naval Discharge Review Board (NDRB) and were denied relief on 13 May 1993. You also submitted a petition to the Board for Correction of Naval Records and were denied relief on 9 September 2022.

You enlisted in the United States Marine Corps and commenced a period of service on 19 September 1988. On 11 May 1990, you were formally counseled concerning periods of UA and your total disregard for authority. You chose not to make a statement in rebuttal. On 21 March 1990, you were found guilty at non-judicial punishment (NJP) of violating Uniform Code of Military Justice (UCMJ) Article 86, for unauthorized absence (UA) from two instances of

failure to go to your appointed place of duty. You did not appeal this NJP but have claimed that this NJP never occurred and that someone forged your signature on the NJP paperwork. On 30 May 1990, you received your second NJP for violating UCMJ Article 86, for a two-day period of unauthorized absence (UA) from appointed place of duty. You did not appeal this NJP. On 24 August 1990, you were formally counseled concerning your frequent involvement with military authorities of a discreditable nature as evidenced by your two NJPs. You again chose not to make a statement in rebuttal.

On 11 September 1990, you began a period of UA, not returning to military control until 19 October 1990. You began a second period of UA on 26 October 1990, not returning to military control until 11 December 1990. You were deployed with your unit from 16 December 1990 to 13 April 1991 in support of Operation Desert Storm/Desert Shield, and were awarded the South West Asia Service Medal.

On 22 July 1991, you were found guilty at Special Court Martial (SPCM) of violating UCMJ Article 86, for the above referenced periods of UA totaling 82 days. You were sentenced to confinement at hard labor for 75 days, reduction in rank to E-1, and forfeitures of pay. Subsequently, on 1 October 1991, you were notified that you were being processed for administrative discharge with an Other Than Honorable (OTH) characterization of service due to your pattern of misconduct. You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. Your Commanding Officer recommended your separation with an OTH, stating that your retention "would adversely affect the morale, discipline, and military effectiveness of this organization." On 23 October 1991, you were discharged from the Marine Corps due to your misconduct with an OTH and assigned an RE-4 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, (b) your explanation and supporting evidence regarding triggering stressors, including but not limited to, your child's birth, the tornado that hit your hometown, combat deployments, and incidents of assault, (c) your assertion that you were struggling with undiagnosed mental health conditions during your service due to these triggering stressors, and (d) the impact that your mental health had on your conduct. For purposes of clemency consideration, the Board noted that you provided documentation related to your post-service accomplishments, including proof of employment and employment recommendations.

In your request for relief, you contend that you were suffering from undiagnosed PTSD related to childhood trauma, that was then exacerbated during service by family related stressors, a combat deployment, and instances of assault. In support of your request, in addition to clemency evidence, you provided a letter from a Nurse Practitioner with █ indicating that you had been treated for Major Depressive Disorder (MDD) and PTSD since August 2021. You submitted another letter from a Licensed Professional Counselor who indicated that he had been treating you since July of 2021 for MDD and PTSD. You also submitted a list of diagnoses from █ and a letter from the Department of Veterans Affairs (VA) indicating diagnoses of PTSD with panic attacks and Stimulant Use Disorder for treatment purposes only.

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 2 January 2024. The Ph.D. noted in pertinent part:

The Petitioner submitted an undated, unsigned letter from a nurse practitioner at █ indicating that he had been treated for Major Depressive Disorder (MDD) and PTSD since August of 2021. He submitted a second letter dated June 2023 from a Licensed Professional Counselor who indicated that he had been treating the Petitioner since July of 2021 – also for MDD and PTSD. He submitted two character references, a list of diagnoses from █, proof of post-service employment, and a letter from the VA indicating diagnoses of PTSD with panic attacks and Stimulant Use Disorder for treatment purposes only. There is no evidence that the Petitioner was diagnosed with a mental health condition or suffered from PTSD while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He had extensive medical notes contained within his service file; however, none mentioned any of the events that the Petitioner referenced. He submitted evidence of temporally remote post-service diagnoses, however the etiology or rationale for the diagnoses was not provided. Additional records (e.g., post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The Ph.D. concluded, “it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition.”

The Board considered the matters that you presented in rebuttal and received on 24 January 2024.

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 SPCM conviction, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the likely negative impact that 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 and places an unnecessary burden on your command and fellow Marines. Further, the Board noted you were provided the opportunity to correct your conduct deficiencies and continued to commit misconduct.

In making this determination, the Board concurred with the advisory opinion that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. The Board noted that you did not report that you were

suffering from any mental or physical conditions that would have triggered referral for treatment. Your in-service medical record contained extensive medical notes; however, none mentioned any of the events that you now reference, nor any disclosed symptoms or concerns that would have been the result of such triggering events. Additionally, the Board felt that you received advice from qualified counsel throughout the court martial process and that were aware of your rights. You never raised the issue mental health concerns during the court-martial process, or during either of your NJPs.

The Board felt that your evidence of post-service diagnoses is temporally remote to your service and fails to draw a sufficient nexus to your underlying misconduct. Specifically, the Board felt that the evidence lacked a detailed etiology or rationale for the underlying diagnoses that would have established the required nexus to your in-service behavior. Further, the Board noted that you did not raise any claims of mental health concerns or instances of assault during your previous request for relief at NDRB. As a result, the Board concluded that your misconduct was not due to mental health-related symptoms. The Board found 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. 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 carefully considered the evidence you submitted in mitigation, 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,

2/7/2024

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Executive Director

Signed by: █