



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

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Docket No. 7724-23

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 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 3 April 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 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 18 May 1993. You participated in ■ from 27 March 1994 to 26 April 1994, and ■ from 11 October 1994 to 5 November 1994. On 15 August 1995, you were issued an administrative remarks (Page 11) counseling warning documenting your deficiency in your conduct; specifically, lying to a senior noncommissioned officer, lack of integrity, and unbecoming of a Marine. The Page 11 expressly warned you that failure to take corrective action may result in administrative separation or judicial proceedings. On 23 August 1995, you received non-judicial punishment (NJP) for operating a motor vehicle while under the influence of alcohol. On 22 March 1996, you received a second NJP for wrongfully operating a motor vehicle on base with your base driving privileges revoked. On 3 December 1996, you received a third NJP for absence from your appointed place of duty. On 21 February 1997, you received a fourth NJP for unauthorized absence and disobeying a lawful order from a commissioned officer.

Consequently, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to pattern of misconduct. You waived your right to consult with military counsel and to present your case to an administrative discharge board. The commanding officer forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Marine Corps with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed your OTH discharge from the Marine Corps by reason of misconduct due to pattern of misconduct. On 22 April 1997, you were so discharged.

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 character of service and contentions that: (1) you have had depression and anger issues for a few years now and believe that your depression and anger issues is a result of your time in the Marine Corps, (2) you were unfairly singled out for extra duties by your supervisors for your past troubles, (3) you tried to stay out of trouble in your remaining months, but being young, angry, and bitter, you turned to drugs and alcohol, (4) you have issues that stem from your time in the Marine Corps, and desires help to deal with these issues so that you can live a positive and healthy life, and (5) since your discharge you have had several jobs; however, due to the difficulties you were experiencing in the Marine Corps, you have had trouble maintaining employment for long periods of time. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 21 February 2024. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition or TBI in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Temporally remote to his military service, he has received a diagnosis of a mental health condition

attributed to TBI. There is no evidence of a diagnosis of PTSD. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. 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 a diagnosis of PTSD that may be attributed to military service. There is post-service evidence from the VA of a diagnosis of a mental health condition attributed to TBI. There is insufficient evidence to attribute his misconduct to PTSD, TBI, or another mental health condition."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your administrative counseling and NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO that while there is post-service evidence from the VA of a diagnosis of a mental health condition attributed to TBI, there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service, and there is insufficient evidence to attribute your misconduct to PTSD, TBI, or another mental health condition. As the AO explained, your personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct, and there is no evidence that you were diagnosed with a mental health condition or TBI in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Therefore, the Board 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 noted that you were provided multiple opportunities to correct your conduct deficiencies during your service; however, you continued to commit additional misconduct. Your Page 11 counseling, operating a motor vehicle while under the influence of alcohol, operating a motor vehicle on base with your base driving privileges revoked, absence from your appointed place of duty, unauthorized absence, and disobeying a lawful order from a commissioned officer, not only showed a pattern of misconduct but were sufficiently serious to negatively affect the good order and discipline of your unit.

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. 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,

4/19/2024

