



**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. 8333-23  
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 14 June 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). Additionally, the Board also considered both an advisory opinion (AO) furnished by qualified mental health provider, as well as your AO rebuttal submission.

You originally enlisted in the U.S. Marine Corps and began a period of active duty service on 26 August 2001. Your pre-enlistment physical examination, on 13 November 2000, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms, or any mental health history or counseling.

On 21 October 2002, your command issued you a “Page 11” counseling warning (Page 11) documenting your lack of maturity, unauthorized absence (UA), and for your barracks room being in disarray during an inspection. You did not elect to submit a Page 11 rebuttal statement.

On 18 November 2002, your command issued you a Page 11 documenting your disobedience of a lawful order, UA numerous occasions, and poor physical fitness. You did not elect to submit a Page 11 rebuttal statement.

On 11 December 2002, your command issued you a Page 11 documenting your disobedience of a lawful order for operating a car on base without valid insurance. The Page 11 advised you that that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. You did not elect to submit a Page 11 rebuttal statement.

On 18 July 2003, you completed a Post-Deployment Health Assessment (PDHA) following your brief deployment to ██████████ in support of ██████████. On your PDHA, you stated that your health in general was very good, and that you did not have any medical or dental problems that developed during your deployment. You expressly denied: (a) experiencing mental health symptoms, (b) being exposed to combat, (c) witnessing combat injuries, (d) discharging your weapon, or (e) feeling that you were in danger of being killed.

On 19 December 2003, you received non-judicial punishment (NJP) for failing to obey a lawful order when you failed to attend a battalion physical fitness test at the time prescribed. You did not appeal your NJP. On 7 January 2004, your command issued you a Page 11 documenting your NJP. The Page 11 advised you that that a failure to take corrective action may result in administrative separation, judicial proceedings, administrative reduction, or limitation of further service. You did not elect to submit a Page 11 rebuttal statement.

On 2 September 2004, you received NJP for UA. You did not appeal your NJP. On 4 November 2004, you commenced a period of UA that terminated on 17 November 2004. On 23 November 2004, you received NJP for two separate UA specifications and failing to obey a lawful order. You did not appeal your NJP.

On 20 December 2004, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to a pattern of misconduct. On 21 December 2004 you waived your rights to consult with counsel and to request a hearing before an administrative separation board. Your commanding officer (CO) recommended that your discharge characterization be under Other Than Honorable conditions (OTH) due to your pattern of misconduct and unsatisfactory performance of duties. In his recommendation to the Separation Authority, the CO stated, in part:

██████████ has been on active duty since 13 August 2001. During this time, he has been the subject of three non-judicial punishments...Due to his NJP's ██████████ had been reduced twice and has eight negative page 11 entries. These entries range from failure to obey lawful orders, PFT failures, Non-recommendation for promotion, to unauthorized absences. ██████████ made no progress, and has

begun to openly state his disregard for the Marine Corps. ██████████ has not improved upon his deficiencies; he is still having problems meeting the high standards of being a Marine. ██████████ proficiency and conduct marks do not reflect the standards of a Marine and requires an enormous amount of supervision to correct his widely varied shortcomings.

Ultimately, on 28 January 2005, you were discharged from the Marine Corps for misconduct with an OTH characterization of service and were assigned an RE-4 reentry code.

On 6 August 2020, the Naval Discharge Review Board (NDRB) denied your initial discharge upgrade application. On 6 March 2023, the NDRB denied your second discharge upgrade application.

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 for a discharge upgrade and change to your narrative reason for separation. You contend that: (a) post-service you were was diagnosed with unspecified trauma related disorder (UTRD), and according to the diagnosing psychologist, your "service in the military exacerbated his pre-military mental health concerns" and intensified your "symptoms...beyond a natural progression," (b) your UTRD arose from a history of child abuse, and such disorder existed but remained undiagnosed at the time you joined the Marine Corps, (c) on active duty you suffered from mental and physical health conditions that manifested in various ways, including in behavior that led to disciplinary actions against you and resulted in your OTH discharge, (d) the record is clear that your capacity to serve was limited from the very outset of your service, when considering the years of abuse and trauma that preceded your enlistment and that only worsened over the course of your military career, and (e) relief is warranted because under the "liberal consideration" standard, your mental health condition mitigated the circumstances leading to your discharge, and you were denied the benefit of current standards for mental health evaluation and treatment, under which you would have received treatment rather than a discipline-related discharge. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

As part of the Board review process, a licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records and issued an AO dated 21 March 2024. The Ph.D. stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during military service, but it appears that he did not follow through with the appointment. There is no evidence that he was diagnosed with a mental health condition in military service. There is no evidence of a diagnosis of PTSD. Temporally remote to his service, a VA clinician has identified a trauma-related mental health condition that may have been exacerbated by military service. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, given his history of misconduct prior to his deployment that continued following his return and his denial of some misconduct, claiming it was actually misunderstanding. 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 Ph.D. concluded, "it is my clinical opinion there is post-service evidence from a VA clinician of a mental health condition that may have been exacerbated by military service. There is insufficient evidence of a diagnosis of PTSD. There is insufficient evidence to attribute his misconduct to a mental health condition."

Following a review of your AO rebuttal submission, the Ph.D. did not change or otherwise modify their original AO.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your misconduct and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to any mental health-related conditions or symptoms. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your 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 not be held accountable for your actions.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that an OTH characterization is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your cumulative misconduct and disregard for good order in discipline clearly merited your discharge. 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.

