



**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. 9262-23

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 5 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 the 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, 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). In addition, the Board considered an advisory opinion (AO) from a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the U.S. Marine Corps and began a period of active duty on 7 January 1993. On 29 June 1994, you were admitted to Naval Hospital, for a stab wound to the left anterior chest, apparently made with a three inch penknife. On 28 September 1994, you were issued a counseling warning for failure to maintain sufficient funds in your checking account which resulted in a returned check written to MWR. On 28 September 1994, you received non-judicial punishment (NJP) for 20 days unauthorized absence (UA). You then started another period of

UA, on 30 September 1994, that lasted until your apprehension on 26 October 1998. On 5 May 1999, you were found guilty at summary court-martial (SCM) for the 1,487 days of UA.

Unfortunately, some documents pertinent to your administrative separation are not in your naval record. Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your DD Form 214, Certificate of Release or Discharge from Active Duty,<sup>1</sup> reveals that you were separated from the Marine Corps on 11 June 1999 with an Other Than Honorable (OTH) characterization of service, your narrative reason for separation is “Misconduct: Commission of a Serious Offense,” your separation code is “HKD1,” and your reenlistment code is “RE-4.”

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 contentions that you were stabbed in the heart by a fellow Marine, you spent time in the ICU, were sent immediately back to your unit, and you were a good Marine before and after returning from your UA. For purposes of clemency and equity consideration, the Board noted you provided a personal statement and documentation describing post-service accomplishments.

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 18 April 2024. The Ph.D. stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. 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 of a mental health diagnosis. He has provided medical evidence in support of his claims of having incurred an injury prior to his UA. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. It is difficult to attribute extended UA to avoidance following a traumatic precipitant, given the available information. 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 insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for

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<sup>1</sup> DD Form 215, Correction to your DD Form 214 reflects correction to block 12b (Separation Date This Period) as 11 June 1999 and block 12c (Net Active Service This Period) as 2 years, 0 months, and 27 days.

military authority and regulations. Further, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to PTSD. As explained in the AO, it is difficult to attribute extended UA to avoidance following a traumatic precipitant, given the available information. Additionally, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your separation with an OTH.

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. 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,

6/24/2024

