



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

█  
Docket No. 9502-23  
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 22 May 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. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 30 June 1997. Between 24 March 1998 and 31 August 1999, you received non-judicial punishment (NJP) on four occasions, for violation of contributing to the delinquency of a minor, failure to obey a lawful

order, driving under the influence, and unauthorized absence (UA). During the aforementioned period, you were formally counseled on two occasions, for deficiencies in your performance. On 2 November 1999, you were diagnosed with alcohol dependence and referred for treatment.

On 6 January 2000, you were counseled, in part, for your arrested due to driving on a suspended license, substandard work performance, and lack of tact and respect. On 15 February 2000, you were again counseled for unauthorized absence (UA), failure to obey an order by eating in unauthorized area, and continued driving on a suspended license. On 16 March 2000, you received NJP for driving on a suspended license.

On 15 November 2000, you were convicted at a summary court martial (SCM) for UA from appointed place of duty and wrongfully appropriation of a rifle-military property in excess of \$100. On 18 November 2000, you completed intensive treatment for substance abuse. However, based on your pattern of misconduct, 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 and, on 2 February 2001, 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 you were a squared away Marine, you suffered from PTSD due to severe mental and physical abuse, you completed treatment but would drive and get in trouble, and you have a successful career and stayed out of trouble since your discharge. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 12 April 2024. The AO noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no medical evidence in support of his claims. 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 considered clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health concern that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD 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

NJPs and SCM, 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 there is insufficient evidence that your misconduct could be attributed to a mental health condition. As the AO explained, your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct and there is no evidence that you were diagnosed with a mental health condition or suffered from PTSD while 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 deficiencies during your service; however, you continued to commit additional misconduct. Your multiple periods of unauthorized absence, violation of orders and regulations, and absence from your appointed place of duty 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. 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. Accordingly, given the totality of the circumstances, the Board determined 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,

6/17/2024

