



**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. 10787-23

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 12 July 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 the advisory opinion (AO) furnished by a qualified mental health provider. Although you were provided an opportunity to respond to the AO, 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 originally enlisted in the U.S. Marine Corps and began a period of active duty service on 30 August 2005. Your pre-enlistment physical examination, on 14 December 2004, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 18 July 2007, your command issued you a “Page 11” warning (Page 11) documenting your hazing of a junior Marine. The Page 11 advised you that any further UCMJ violations could result in punitive and/or negative administrative action. You did not submit a Page 11 rebuttal statement. On 27 March 2008, you reenlisted.

On 21 January 2011, you received non-judicial punishment (NJP) for being incapacitated for the proper performance of your duties due to the previous wrongful overindulgence of intoxicating liquor. You did not appeal your NJP. On the same day, your command issued you a Page 11 documenting your NJP. The Page 11 advised you that a failure to take corrective action and any further UCMJ violations may result in judicial or adverse administrative action, including but not limited to administrative separation. The Page 11 also notified you were restricted from promotion for a period of 3 months due to your NJP. You elected not to submit a Page 11 rebuttal statement.

On 21 July 2011, your post-traumatic stress disorder (PTSD)/traumatic brain injury (TBI) screening prior to any involuntary administrative separation indicated that you did not have either a PTSD or TBI diagnosis. On 31 August 2011, you received NJP for reckless driving when you drove in excess of 96 mph entering a roundabout while intoxicated (BAC 0.14). You did not appeal your NJP. Consequently, your command initiated administrative separation proceedings by reason of: (a) misconduct due to a pattern of misconduct, (b) misconduct due to the commission of a serious offense (for your assault and battery upon your spouse in March 2010), and (c) alcohol abuse rehabilitation failure for failing an alcohol abuse/dependency aftercare program.

However, you engaged in additional misconduct while your administrative separation was pending. On 12 September 2011, while you were on restriction due to your NJP, you began to aggressively instigate confrontation with another Marine while you were under the influence of alcohol. Your commanding officer (CO) then placed you in pretrial confinement to await a trial by court-martial.

On 23 September 2011, you submitted a voluntary written request for an administrative discharge for the good of the service under Other Than Honorable conditions (OTH) to avoid trial by court-martial for willfully disobeying your superior commissioned officer’s order to not possess or consume alcoholic beverages. Prior to submitting this voluntary discharge request, you conferred with a qualified military lawyer at which time you would have been advised of your rights and warned of the probable adverse consequences of accepting such a discharge. You voluntarily admitted you were guilty of your charged willful disobedience offense, and you acknowledged if your request was approved your discharge characterization would be OTH. As a result of this course of action, you were spared the stigma of a court-martial conviction for your willful disobedience, as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a military judge. Ultimately, on 28 October 2011, you were separated from the Marine Corps in lieu of a trial by court-martial with an OTH discharge characterization and were an RE-4 reentry code.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that: (a) your entire service should not be based on one bad moment, (b) you had a momentary lapse in judgment after your wife left you and took your child away, (c) prior to this you were serving honorably and were awarded a Good Conduct Medal, and (d) you have been diagnosed with PTSD from your time on active duty. For purposes of clemency and equity consideration, the Board considered the entirety of 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 17 May 2024. The Ph.D. stated in pertinent part:

Petitioner was properly evaluated and received treatment for mental health concerns during his military service. He received several mental health diagnoses during military service, including PTSD, Alcohol Use Disorder, and other mental health concerns. It appears that his primary concern during military service was Alcohol Use Disorder. There is insufficient evidence to attribute his misconduct to PTSD or a mental health condition other than Alcohol Use Disorder. Although he did carry a diagnosis of PTSD at times during his military service, when he was evaluated prior to separation, he denied clinically significant symptoms of PTSD. 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 in-service evidence of diagnoses of PTSD and other mental health conditions that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition, other than Alcohol Use Disorder."

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 there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct forming the basis of your discharge. Moreover, even if the Board assumed that your misconduct was attributable to any mental health conditions, the Board unequivocally concluded that the severity of your cumulative 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 concluded 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 characterization under OTH conditions 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 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.

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,

7/22/2024

