



**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. 561-24  
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 7 August 2024, has carefully examined your current request. 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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 an advisory opinion (AO) furnished by qualified mental health provider and your AO rebuttal submission.

You previously applied to this Board for a discharge upgrade and were denied on 20 March 2023. The facts of your case remain substantially unchanged.

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: (a) there is an extensive documentation of your service-connected PTSD going

back to 2005, (b) further psych records show the connection between your crimes and your PTSD, (c) you had a persistent negative emotional state of anger, guilt, and shame, and you had reckless/self-destructive behavior, (d) you felt you had not done enough in ██████████, (e) all of these symptoms not only were caused by the war, they were also caused by the suicide of a Lance Corporal you knew after he was caught with marijuana, (f) you have many post-service rehabilitative educational accomplishments, and (g) you had a spotless record before the war. 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 4 June 2024. The Ph.D. stated in pertinent part:

Petitioner submitted VA paperwork dated June 2019 noting service connection for PTSD for “treatment purposes only.” In October 2023, ██████████ records indicate diagnoses on Major Depressive Disorder, PTSD, and Unspecified Anxiety Disorder. Mental Health note during incarceration dated April 2007 indicates the following: “Had a mildly cynical (comic) view of his ‘killing.’ I went to war and came back and hadn’t killed enough ██████████.” The petitioner submitted evaluations while incarcerated, post-service accomplishments, and articles on PTSD.

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any symptoms of a mental health condition. Furthermore, the nature and extent of his misconduct exceeds that which would be commonly observed due to symptoms of PTSD. Mental health notes from his incarceration (2007) further support the notion of lack of remorse, which is congruent with long-standing characterological issues. His statement is not sufficiently detailed to provide a nexus with his misconduct. Additional records (e.g., mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The Ph.D. concluded, “it is my considered clinical opinion there is sufficient evidence of a mental health condition that is temporally remote to service. There is insufficient evidence that his misconduct could be attributed 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 cumulative misconduct, and determined that there was insufficient evidence to support the argument that any such mental

health conditions mitigated the particularly egregious misconduct that formed the basis of your discharge. As a result, the Board concluded that your cumulative misconduct was not due to any mental health-related conditions or symptoms whatsoever. 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 depraved heart 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. Lastly, the Board determined that Department of Veterans Affairs (VA) eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only and are not binding on the Board.

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. The fact remains that you engaged in serious misconduct involving the loss of life of two individuals, at least one of whom was a United States 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.

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,

8/13/2024

