



**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. 913-24  
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.

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 2 August 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 an advisory opinion (AO) furnished by qualified mental health provider. Although you were provided an opportunity to respond to the AO, 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 issues 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 U.S. Marine Corps and began a period of active duty service on 14 May 1990. Your pre-enlistment physical examination, on 29 March 1990, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 15 March 1991, you were terminated from the Level II Alcohol Rehabilitation Program (Level II) for not actively participating in small group sessions. You stated in a Level II journal entry that you did not believe you had any problems. Consolidated Substance Abuse Counseling Center (CACC) staff recommended that you attend inpatient Level III Alcohol Rehabilitation Program (Level III). On 21 March 1991, you were diagnosed to be alcohol dependent and formally offered Level III treatment.

On 28 March 1991, your command issued you a "Page 11" counseling warning (Page 11) documenting your alcohol-related incident; specifically, on 1 March 91, being disrespectful to and disobeying a non-commissioned officer, disobeying a written order, and destruction of government property while having previous indulgence in intoxicating liquor. The Page 11 noted you were scheduled for Level III treatment beginning on 13 May 1991. The Page 11 further advised you that a failure to take corrective action may result in administrative separation or limitations on further service.

On 29 March 1991, you received non-judicial punishment (NJP) for two separate insubordinate conduct specifications, failing to obey a lawful order, destruction of government property, and drunk and disorderly conduct. You did not appeal your NJP.

On 21 August 1991, you received NJP for unauthorized absence (UA) and for failing to obey a lawful order. You did not appeal your NJP.

On 25 September 1991, your command issued you a Page 11 warning documenting your inability to comply with your alcohol rehabilitation aftercare. The Page 11 noted that you completed Level III on 28 June 1991, but that you failed to adequately maintain the Level III aftercare program as evidenced by your 21 August 1991 NJP. The Page 11 further noted that as a result of not complying with your alcohol rehabilitation aftercare program you will be processed for administrative separation.

Consequently, you were notified of administrative separation proceedings by reason of alcohol abuse rehabilitation failure due to your continued use of alcohol during your aftercare treatment. You were processed using "notification procedures," which meant that you were not entitled to request an administrative separation board to hear your case, but the least favorable discharge characterization you could receive was General (Under Honorable Conditions) (GEN). You waived your rights to consult with counsel and submit a written statement for consideration by the Separation Authority. In the interim, on 13 December 1991, your separation physical examination and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. Ultimately, on 8 December 1992, you were discharged from the Marine Corps for alcohol abuse rehabilitation failure with a GEN characterization of service and assigned 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 Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that: (a) you were stationed on Okinawa and you started to drink, (b) you went to treatment twice but you weren't being honest and were stubborn, (c) you were young and didn't understand, (d) you were worried about your parents, (e) your parents were not working and their oven exploded and caused you to think about how you could help your parents out, and (f) you were going through post-traumatic stress and didn't realize you were suffering from PTSD. 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 6 June 2024. The Ph.D. stated in pertinent part:

During military service, the Petitioner was evaluated on multiple occasions and diagnosed with an alcohol use disorder. There is no evidence of a diagnosis of PTSD during military service. He has provided no medical evidence to support his claims. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or a nexus with his misconduct, which appears to be related to his alcohol use disorder and problematic alcohol behavior that existed prior to enlistment. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his separation from service) 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 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 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 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 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 also believed you received considerable leniency from your command when they processed you for separation for an alcohol rehabilitation failure using notification procedures with the least favorable discharge characterization eligible being a GEN. The Board determined your command could just have easily alternatively processed your NJP offenses for misconduct due to the commission of a serious offense, and misconduct due to a pattern of misconduct, all individually and/or collectively with the potential for you to receive an under other than honorable conditions (OTH) characterization of service. The Board believed that your repeat misconduct would have likely resulted in an OTH discharge characterization.

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 GEN or 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 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,

8/7/2024

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