



**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. 1154-24  
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 19 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional. 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 enlisted in the Marine Corps and commenced active duty on 11 May 2005. On 13 June 2006, you received non-judicial punishment (NJP) for failure to obey a lawful order and destruction of government property. Additionally, on 19 June 2006, you were issued an administrative remarks (Page 11) counseling concerning deficiencies in your performance and/or

conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

On 3 October 2006, you were diagnosed with Dysthymic Disorder and, on 24 October 2006, you self-referred to the Substance Abuse Counseling Center (SACC) after your second alcohol related incident on 15 September 2006.

On 21 November 2006, you received NJP for insubordinate conduct toward a non-commissioned officer (NCO), disobeying a direct order by drinking while under the legal age, using provoking speech or gestures, and assaulting a Lance Corporal.

On 25 October 2007, you received NJP for disrespectful language toward several NCOs in the execution of duty. You were again issued an administrative remarks (Page 11) counseling concerning deficiencies in your performance and/or conduct.

On 28 January 2008, you received NJP for stealing money from two other Marines. On 28 March 2008, you were referred to the SACC and began attending weekly follow-up sessions until your scheduled alcohol abuse treatment. On 10 Apr 2008, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to pattern of misconduct. You elected to consult with legal counsel, submitted a statement, and waived your right to an administrative discharge board (ADB). While awaiting your administrative separation processing, you attended outpatient alcohol abuse treatment and were discharged with a good prognosis on 29 May 2008. The Separation Authority subsequently directed your discharge with an OTH characterization of service and you were so discharged on 1 October 2008.

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 change your discharge characterization of service and your contentions that your misconduct was mitigated by mental health concerns from your childhood that were exacerbated by hazing and bullying you received while on active duty, that your leadership failed you and did not offer you help, and that a “few minor rules violations” should not get in the way of you getting the care you need from the Department of Veterans Affairs. For purposes of clemency and equity consideration, the Board considered your statement and the advocacy letters you provided.

As part of the Board’s review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 2 July 2024. The AO stated in pertinent part:

Petitioner contends he incurred Post Traumatic Stress Disorder (PTSD) and other mental health concerns during military service, which may have contributed to the circumstances of his separation.

Petitioner entered active duty in the US Marine Corps in May 2005. He acknowledged a history of pre-service counseling at age 16, but no additional information regarding his treatment was found in the record.

In June 2006, he was formally counseled and received non-judicial punishment (NJP) for underage alcohol consumption and destruction of government property.

In September 2006, he was diagnosed with Dysthymic Disorder. He received one follow-up mental health treatment session in October 2006. He was evaluated and denied alcohol dependence, separately, receiving a diagnosis of episodic Alcohol Abuse. During the evaluation, he reported a history of alcohol use beginning at age 13, with regular use at age 16. Additional treatment follow-up was not found in the record.

In March 2008, the Petitioner was evaluated and diagnosed with Alcohol Abuse, with additional information needed to rule out the presence of Alcohol Dependence. He “stated that he did not attend treatment due to a one-year deployment in Iraq from November 2006 to November 2007.”

In May 2008, he participated in outpatient treatment for Alcohol Use Disorder and continued to deny symptoms of dependence. In October 2008, he was discharged under other than honorable conditions. He denied symptoms of mental health concerns during his separation physical.

Petitioner contended that harassment incurred during military service exacerbated mental health concerns due to abuse sustained and witnessed during childhood.

During military service, the Petitioner was diagnosed with a mental health condition (Dysthymic Disorder). Unfortunately, there is insufficient information regarding this diagnosis, given his pre-service counseling history. The Petitioner has provided no additional medical evidence to support his mental health claims, but his current claims are consistent with in-service statements regarding his personal history. It is possible that preservice mental health concerns could have been exacerbated by in-service stressors, resulting in a worsening of mental health symptoms. However, available information is not sufficiently detailed to provide a nexus with his misconduct. In particular, it is difficult to attribute theft and destruction of property to a mental health condition.

The AO concluded, “it is my clinical opinion there is in-service evidence of diagnoses of mental health concerns that may have exacerbated during military service. There is insufficient evidence of a diagnosis of PTSD. There is insufficient evidence to attribute his misconduct to a 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, outweighed these mitigating factors. In making this finding, the Board considered the

seriousness of your misconduct and the likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board particularly noted the negative impact that your theft of property of other Marines would have had on unit morale and readiness and determined that larceny from fellow Marines is more severe than a “minor rules violation.” The Board also noted that you were given multiple opportunities to address your conduct issues, but you continued to commit misconduct, which ultimately led to your discharge for a pattern of misconduct. Additionally, the Board concurred with the AO and determined that while there is in-service evidence of diagnoses of mental health concerns that may have exacerbated during military service, there is insufficient evidence of a diagnosis of PTSD and insufficient evidence to attribute your misconduct to a mental health condition. The Board further considered that you provided no additional medical evidence in support of your claim.

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. 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,

9/11/2024

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Executive Director

Signed by: █