



**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. 1687-24

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 16 September 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 the 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, 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)/mental health condition (MHC) (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, dated 18 July 2024. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Marine Corps and began a period of active duty on 30 January 1985. Upon your enlistment, you admitted preservice use of marijuana and being arrested for simple burglary. On 12 December 1985, you were convicted by special court martial (SPCM) for three instances of larceny. You were found guilty and sentenced to a Bad Conduct Discharge (BCD), reduction in rank, confinement, and forfeiture of pay. On 21 May 1986, the Marine Corps Court of Military Review determined that your findings and sentence, as approved on review, were affirmed. On

31 March 1987, your SPCM sentence was ordered to be executed. On 20 April 1987, 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 for a discharge upgrade and contentions that: (a) there was a miscarriage of justice and a disproportionate punishment during your court martial proceedings, (b) you believe that your SPCM punishment was unduly harsh, especially when compared with the crime committed, (c) your experienced has left you with significant PTSD, particularly in the presence of strangers who were there continuously harassing you, (d) you experienced problems with your scrotum, which you never encountered before your confinement, (e) the mental and physical strain imposed upon you during the time in confinement took a toll of your overall well-being, (f) the judgmental gazes and inhumane treatment from fellow individuals made you feel diminished and stripped and stripped of your dignity. For purposes of clemency and equity consideration, the Board noted you provided a personal statement and medical documentation.

As part of the Board's review, the Board considered the AO. The AO stated 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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Temporally remote to his military service, he has received diagnoses of PTSD and other mental health conditions that he reported began during military service. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. More weight has been given to the lapse in time from the Petitioner's separation from service to the period in which his symptoms became sufficiently interfering as to seek treatment. It is difficult to attribute the Petitioner's misconduct to a mental health condition, given his pre-service behavior and his denial of having engaged in significant misconduct. There is also some discrepancy between the Petitioner's report of his misconduct in the mental health evaluation and the description of his misconduct in the available service records. 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 clinical opinion there is post-service evidence from a civilian mental health provider of diagnoses of PTSD and other mental health conditions that may be attributed to military service in part. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SPCM conviction, outweighed these mitigating factors. In making this finding, the Board

considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. The Board noted you provided no evidence, other than your personal statement, to substantiate your contention that you were denied due process. The Board also considered that your case received multiple levels of legal review, and no error was noted in the findings. Therefore, the Board was not persuaded by your argument that there was a denial of due process, miscarriage of justice, or a disproportionate sentence in your case. Lastly, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD or a mental health condition. As explained in the AO, your personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD 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 the 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,

10/4/2024

