



**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. 1865-24  
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 26 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 12 November 1996. On 18 November 1997, you were convicted at Special Court-Martial (SPCM) of violating Article 86 of the Uniform Code of Military Justice (UCMJ) for two periods of unauthorized absence (UA).

You were sentenced to 45 days of confinement and a Bad Conduct Discharge (BCD). After completion of all levels of review, you were so discharged on 15 September 1998.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 22 December 2004, based on their determination that your discharge was proper as issued.

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 Memo. These included, but were not limited to, your desire to change your discharge characterization of service and your contentions that you have mental health problems because of your time in the Marines, and you feel you were ignored after seeking help for mental health several times before you went UA. You further contend you are currently in the SSDI process trying to prove you are disabled because of your mental health, and that you have been unable to work for the past five years. You also state, before then, you struggled to keep a job due to your mental health and that you've been on a lot of medications over the past 25 years. For the purposes of clemency and equity consideration, you provided civilian medical records but no supporting documentation describing post-service accomplishments or advocacy letters.

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 27 June 2024. The AO noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. The Petitioner has provided evidence of several years of treatment for mental health concerns within a year of separation from service. It is possible that he may have been experiencing symptoms of anxiety and depression during his service. Although it is possible anxiety and depression may have contributed to his UA, it is difficult to attribute his misconduct solely to mental health concerns, given the Petitioner's brief period of service prior to UA and the presence of problematic characterological traits. 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 some post-service evidence from civilian providers of mental health concerns that may have been present during military service. There is insufficient evidence to attribute his misconduct to solely 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 SPCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the likely negative impact your repeated absence had on the good order and discipline of your command. The Board also found that your conduct showed a complete disregard for military authority and regulations. Additionally, the Board concurred with the AO and

determined that, although there is some post-service evidence from civilian providers of a mental health condition that may have been present during military service, there is insufficient evidence to attribute your misconduct to solely a mental health condition. As the AO noted, there is no evidence that you were diagnosed with a mental health condition in the military service and, although it is possible you may have been experiencing symptoms of anxiety and depression that may have contributed to your UA, it is difficult to attribute your misconduct solely to mental health concerns. The Board additionally agreed that additional records, such as those outlined above, may aid in rendering an alternate opinion.

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. 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,

9/8/2024

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