



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

██████████  
Docket No. 2343-24  
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 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 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.

You enlisted in the Marine Corps and commenced active duty on 13 June 1988. On 8 July 1988, your medical record documents that you were noted by a medical provider to be manipulative, immature, and impulsive. In addition, you expressed a desire to go home. On 12 July 1988, you received non-judicial punishment (NJP) for willfully disobeying orders to prepare for drill and to fall out for classes. Additionally, you were issued an administrative remarks (Page 11) counseling indicating that, because of your lack of reasonable effort, you had been assigned a reenlistment code of RE-3F and informed of that action.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Marine Corps on 19 July 1988 with an uncharacterized Entry Level Separation, your narrative reason for separation is “Entry level performance and conduct,” and your reenlistment code is “RE-3F.”

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 upgrade your discharge characterization and your contentions that you were physically, mentally, and emotionally abused by your drill instructors, and forced to quit; preventing you from graduating and serving in the Marine Corps as planned. You contend you were forced to call and write home under pressure and duress and say things that were not true. You further contend you were told if you did not do these things, the drill instructors would ruin your life. You state you were 18 years old and believed them. Lastly, you contend that, due to this abuse, you were unable to have a meaningful relationship until you were in your forties. Additionally, the Board noted you checked the “DADT” and “Reprisal/Whistleblower” boxes on your application but provided no supporting evidence of your claims. For purposes of clemency and equity consideration, the Board noted you did not provide 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 26 July 2024. The AO noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated on two occasions. The absence of mental health condition was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed by the mental health clinician. Unfortunately, he has provided no medical evidence to support his claims. His personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. 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 insufficient evidence of a diagnosis of a mental health condition that may be attributed to military service. 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 your uncharacterized entry level separation remains appropriate. The Board noted that service regulations direct the assignment of an

uncharacterized entry level separation for service members processed for separation in their first 180 days of active duty. While there are exceptions in cases involving misconduct or extraordinary performance, the Board determined neither applied in your case. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a diagnosis of a mental health condition that may be attributed to military service and insufficient evidence to attribute your misconduct to a mental health condition. As the AO noted, you did not exhibit any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. The Board also agreed that you have provided no medical evidence to support your claims and that your personal statement is not sufficiently detailed to establish clinical symptoms in service or provided a nexus with your misconduct. Ultimately, the Board agreed additional records, as described above, may aid in rendering an alternate opinion.

Finally, in reviewing your record, the Board found no evidence to support a finding that you were processed for separation under DADT or a similar policy. Similarly, the Board found no evidence that you were the victim of a reprisal action.

Therefore, 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. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

The Board determined there was insufficient evidence to conclude you were the victim of reprisal in violation of 10 USC 1034. 10 USC 1034 provides the right to request Secretary of Defense review of cases with substantiated reprisal allegations where the Secretary of the Navy's follow-on corrective or disciplinary actions are at issue. Additionally, in accordance with DoD policy you have the right to request review of the Secretary of the Navy's decision regardless of whether your reprisal allegation was substantiated or non-substantiated. Your written request must show by clear and convincing evidence that the Secretary of the Navy acted arbitrarily, capriciously, or contrary to law. This is not a de novo review and under 10 USC 1034(c) the Secretary of Defense cannot review issues that do not involve reprisal. You must file within 90 days of receipt of this letter to the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), Office of Legal Policy, 4000 Defense Pentagon, Washington, DC 20301-4000. Your written request must contain your full name, grade/rank, duty status, duty title, organization, duty location, mailing address, and telephone number; a copy of your BCNR application and final decisional documents; and, a statement of the specific reasons why you are not satisfied with this decision and the specific remedy or relief requested. Your request must be based on factual allegations or evidence previously presented to the BCNR, therefore, please also include previously presented documentation that supports your statements.

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,

9/26/2024

