



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

██████████
Docket No. 3139-24
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 30 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 and your response to the AO.

You enlisted in the Marine Corps and commenced active duty on 23 January 2001. After a period of continuous Honorable service, you immediately reenlisted on 4 October 2004.

On 15 March 2005, you were issued an administrative remarks (Page 11) counseling concerning deficiencies in your performance and/or conduct related to disorderly conduct due to drunkenness. 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 4 October 2005, you were again issued a Page 11, on this occasion for insubordinate conduct as part of an alcohol-related incident that occurred during a command function.

On 15 July 2008, you pleaded guilty at General Court-Martial (GCM) to conspiring to commit larceny under Article 81 of the Uniform Code of Military Justice (UCMJ), larceny of a car stereo, a wallet, a driver's license, a social security card, a disposable camera, and an unknown number of compact discs, under Article 121 of the UCMJ, and knowingly receiving and selling stolen property, under Article 134 of the UCMJ. You were sentenced to reduction in paygrade to E3, confinement for 14 months, and a Bad Conduct Discharge. After completion of all level of review, you were so discharged on 9 April 2010.

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 to Honorable and change your narrative reason for separation to Secretarial Authority, with corresponding changes to your separation and reenlistment codes. You contend that your discharge should be mitigated due to your PTSD, your misconduct directly relates to your mental health condition under a plain reading of the Kurta Memo, you experienced live combat with the enemy, witnessed car bombs, and saw and smelled dead bodies during your service, you turned to self-medication in the form of alcohol abuse, your alcohol abuse led to counseling and a citation for drunk and disorderly conduct in March of 2005, you reflected on the conduct leading to your court-martial while in pre-trial confinement, it was difficult to go through alcohol withdrawal while realizing you had let down your fellow Marines while they prepared to deploy, an error was made when you were discharged because your misconduct should have been mitigated by your clear PTSD symptoms, and your quality of service warrants relief because you served 8 years, three months, and two days, of which one year, five months, and 26 days of which were served overseas, and that you also had seven months and 10 days of sea service. Additionally, you state you were highly decorated, and the post-service success you achieved, first by working in construction, and then transitioning to becoming a CDL truck driver—which led to your current job working in the ██████████—supports your request for upgrade. Lastly, you state you are a loving husband and father. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application including your legal brief with exhibits and your personal statement.

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 18 August 2024. The AO noted in pertinent part:

Petitioner submitted a PTSD Checklist – Military Version (PCL-M) dated September 2009, and one active duty mental health records from ██████████ dated October 2005. This latter document notes Petitioner was sent for a substance abuse screening and at the time verbalized having nightmares from his time in Iraq. It was noted that he did not meet full criteria for PTSD and was diagnosed with a Rule-out PTSD (needing further evaluation), and Substance Use Disorder.

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any symptoms of a mental health condition. His statement thorough and if candid appears as though he could

be experiencing symptoms of PTSD. He did not however submit any medical evidence for a final diagnosis of PTSD. Regardless, the nature and severity of his misconduct is not typical of one suffering from PTSD. Additional records (e.g., mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

In response to the AO, you provided an additional legal brief that supplied clarification of the circumstances of your case. It was determined no new medical evidence was provided and the AO remained unchanged.

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 GCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved larceny. The Board determined that such conduct shows a significant lack of moral character and trustworthiness and is wholly incompatible with military service. Additionally, the Board concurred with the AO and determined that there is insufficient evidence 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, there is no evidence that you were diagnosed with a mental health condition while in military service, or that you exhibited any symptoms of a mental health condition. The Board also agreed that although your personal statement makes it appear as though you could have been experiencing symptoms of PTSD, you did not provide any medical evidence for a final diagnosis. Finally, the Board agreed additional records, as described above, may aid in rendering an alternate opinion. Therefore, the Board 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.

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 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,

10/24/2024

