



**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. 3802-24  
Ref: Signature Date

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Dear █

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 4 October 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You originally enlisted in the U.S. Marine Corps and began a period of active duty service on 23 January 2003. Your enlistment physical examination, on 24 August 2001, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 6 October 2006, you reenlisted for four (4) years and four (4) months.

On 23 February 2010, pursuant to your guilty pleas, you were convicted at a Special Court-Martial (SPCM) for: (a) disobeying a lawful general order by wrongfully failing to report that a fellow Drill Instructor broke a Marine Recruit's thumb, (b) disobeying a lawful general order by wrongfully failing to report that you kicked such Marine Recruit in the head, and (c) an assault consummated by a battery upon such Recruit when you kicked him in the head. You were sentenced to confinement for four (4) months, a reduction in rank to the lowest enlisted paygrade (E-1), forfeitures of pay, and a discharge from the Marine Corps with a Bad Conduct Discharge (BCD).

Your USMC fitness report for the period ending 9 March 2010 noted, in part, the following regarding your SPCM:

MRO was the subject of a special court martial and was charged with and found guilty of recruit abuse. This is in direct violation of his duties as a drill instructor. He failed to set the example that is required of not only a drill instructor but a Marine NCO as well.

MRO showed a considerable lack of judgment when decided to abuse a recruit in his charge. He continued that lack of judgment when he failed to ensure that his incident was correctly reported up the proper chain of command.

On 12 April 2010, your command issued you a "Page 11" counseling entry (Page 11) noting that, due to your misconduct as a Drill Instructor, your additional MOS of 0911 was "voided effective 8 April 2010 due to "Relief for Cause" for personal misconduct." The Page 11 also expressly advised you that you were not recommended for future service/reenlistment.

On 19 April 2010, the Convening Authority approved the SPCM sentence as adjudged. On 25 May 2010, your command placed you on involuntary appellate leave to await your discharge. On 30 June 2010, the U.S. Navy-Marine Corps Court of Criminal Appeals affirmed the sentence as approved by the CA. Upon the completion of SPCM appellate review in your case, on 15 September 2010, you were discharged from the Marine Corps with a BCD and assigned an RE-04 reentry code. On 2 February 2012, the Naval Discharge Review Board denied your discharge upgrade application.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and change to your reason for separation. You contend that: (a) the incident leading to your discharge was an aberration and not a reflection of your otherwise stellar service to your country, rather it was a symptom of your undiagnosed and untreated PTSD, and (b) to further prevent you from getting the help you need given your otherwise Honorable service is an injustice that only this Board can remedy by granting your upgrade request. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

As part of the Board review process, a licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO dated 29 July 2024. The Ph.D. stated in pertinent part:

Review of medical records note a diagnosis of PTSD in one document during his exit physical; however, there was no supporting documentation, i.e., symptoms or rationale for the diagnosis. It is unclear as to whether the Petitioner verbalized this concern, or whether the medical officer's assessment resulted in the diagnosis.

Additional information would be needed to further assess the rationale for the diagnosis. It is possible that his misconduct could have been mitigated by symptoms of PTSD (mood lability, poor judgment, impulsivity); however, there is not enough evidence at this time that he did suffer from PTSD at the time of the misconduct. His statement is not sufficiently detailed to provide a nexus with his misconduct. 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 Ph.D. 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."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the serious misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct while acting in your official capacity far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also concluded that your misconduct in no way, shape, or form could ever be characterized as intended to somehow facilitate a recruit's successful graduation from recruit training. The Board also 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.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this was not a case warranting any clemency as you were properly convicted at a SPCM of serious misconduct while acting in your

official capacity. The Board determined that characterization with a BCD appropriate when the basis for discharge is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. 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.

Regarding your requests to document your deployments on your DD Form 214, the Board determined that no corrections were necessary to reflect your deployments because Block 12g on your DD Form 214 notes six (6) months and twenty-eight (28) days of "sea service," which accounts for your deployments.

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,

10/16/2024

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