



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

██████████  
Docket No. 4059-24  
Ref: Signature Date

████████████████████  
████████████████  
████████████████

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 7 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). 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 9 January 1979. On 18 December 1979, you were hospitalized after being found comatose in your car as a result of carbon dioxide poisoning. On 24 June 1980, you commenced a period of unauthorized absence (UA) that ended on 15 January 1981. On 23 February 1981, you commenced a second period of

UA that ended on 7 May 1981. On 23 February 1981, you were convicted at Special Court-Martial (SPCM) of violating Article 86 of the Uniform Code of Military Justice (UCMJ) for UA between 24 June 1980 and 15 January 1981. You were sentenced to reduction in paygrade to E1, forfeiture of \$200 pay per months for three months, and confinement for three months. On 18 July 1981, you again commenced a period of UA that ended on 23 July 1981. You received non-judicial punishment (NJP) for this most recent UA on 13 August 1981. You commenced a final period of UA on 2 November 1981 that ended on 17 February 1982.

Subsequently, you were charged with UA and, on 24 March 1982, you requested an Other Than Honorable (OTH) discharge in lieu of trial for the good of the service. Ultimately, your request was approved and, on 16 April 1982, 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 Memo. These included, but were not limited to, your desire to upgrade your discharge characterization and your contentions that you were a respected Marine but after suffering a near death accident, carbon dioxide poisoning requiring hospitalization that led to your diagnosis of PTSD, you did not receive treatment for your condition and were punished and kicked out of the Marine Corps. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application including your service record documents, your health records, a congressional letter, and a record of hospitalization.

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 20 August 2024. The AO noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated on multiple occasions. Although he was initially diagnosed with PTSD, after additional time had passed following the precipitating trauma, the Petitioner no longer met criteria for PTSD or another mental health condition, but only met criteria for an alcohol use disorder. This absence of diagnosis other than alcohol use disorder 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 clinicians. Unfortunately, the Petitioner has provided no additional medical evidence to support his claims. 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 an ongoing diagnosis of PTSD or another mental health concern that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another 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 and NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness and repetitive nature of your misconduct. The Board found that your conduct showed a complete disregard for military authority and regulations. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of an ongoing diagnosis of PTSD or another mental health concern that may be attributed to military service, and there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As the AO noted, you were appropriately referred for psychological evaluation during your enlistment and properly evaluated on multiple occasions, and although you were initially diagnosed with PTSD, after additional time had passed following your accident, you no longer met criteria for PTSD or another mental health condition. Therefore, the Board concluded your misconduct was not mitigated by a mental health condition. Lastly, the Board agreed with the AO that additional records, as described 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 an OTH. 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,

10/30/2024

