



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

█  
Docket No. 4904-24  
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 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, 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)/mental health condition (MHC) (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.

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.

During your enlistment processing, you disclosed one minor traffic infraction and were granted an enlistment waiver. You enlisted in the U.S. Marine Corps and began a period of active duty on 3 February 1981. On 10 August 1982, you received your first non-judicial punishment (NJP)

for a period of unauthorized absence (UA). On 22 September 1982, you received a second NJP for wrongfully using threatening and insulting language towards two Marines. You received a third NJP, on 20 May 1983, for failing to obey a lawful order. Following this, you were issued administrative remarks retaining you in the naval service, documenting your infractions, and advising you that subsequent violation(s) of the Uniform Code of Military Justice (UCMJ) or conduct resulting in civilian conviction could result in administrative separation under Other Than Honorable (OTH) conditions. On 7 June 1983, you received a fourth NJP for disrespect in language towards a Marine.

Consequently, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to pattern of misconduct. You waived your right to consult with counsel and to present your case to an administrative discharge board. The commanding officer forwarded his administrative separation package to the separation authority (SA) recommending your administrative discharge from the Marine Corps with an Other Than Honorable (OTH) characterization of service. The SA directed your OTH discharge from the Marine Corps by reason of misconduct due to pattern of misconduct and, on 13 July 1983, 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 Memos. These included, but were not limited to, your desire for a discharge upgrade and contention that: (1) your family lived at █ while your father, a career Marine who served three tours in █ and one in █ was stationed there, (2) you have throat and esophageal cancer, (3) you joined the Marine Corps at a young age and served honorably, witnessing difficult and traumatic events, (4) you were a decorated Marine with an excellent service record until a single incident during a skit onboard █, intended as humor, went awry and you, the only participant who completed the skit, unintentionally embarrassed the ship's commander, which led to his relief from duty and discharge, (5) your punishment was overly harsh given your youth, impressionability, and the circumstances, (6) you have not spoken in over six years due to a laryngectomy, and your recent cancer diagnosis has prompted you to seek an Honorable discharge in hopes you may access medical benefits and ultimately be interred alongside your father in the memorial cemetery, (7) your father, who passed from Agent Orange-related cancer, made a final request that the family work to secure an Honorable discharge for you to ensure you receive needed support and benefits, and (8) you are deeply remorseful. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 12 September 2024. The AO stated in pertinent part:

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 is not sufficiently detailed to provide a nexus with his misconduct. He did not submit any medical evidence in support of his claim. 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.”

On 9 October 2024, you submitted a rebuttal in response to the AO in the form of a letter from a psychologist at █. After reviewing your rebuttal evidence, 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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Additionally, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to your military service or misconduct. 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 have been held accountable for your actions. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans’ benefits, or enhancing educational or employment opportunities.

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 characterization. While the Board carefully considered the evidence you submitted in mitigation and appreciates your remorse for your actions, 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 your request does not merit relief.

The Board offers its deepest condolences for the loss of your father and wishes you well as you battle through your current condition.

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,

11/19/2024

