



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

Docket No. 5137-24  
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 28 October 2024, has carefully examined your current request. 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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 previously applied to this Board for an upgrade to your characterization of service where you contended that your discharge was unjust because you served in the Marine Corps with

honor and distinction. The Board denied your request on 19 June 2019. The facts of your case remain substantially unchanged

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to change your discharge characterization of service and your contentions that PTSD and your new religious beliefs made you believe that the Marine Corps was evil, you were paranoid and didn't trust your chain of command, and now realize they were trying to help you. You further contend that you have since "separated from the church," are embarrassed and anxious about your actions while in service, and have achieved academic degrees, professional certifications, high-profile employment, and raised a family. For purposes of clemency and equity consideration, the Board considered your statement, the advocacy letter, treatment letters, and the Department of Veterans Affairs disability letter you provided.

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 13 September 2024. The AO stated in pertinent part:

Petitioner contends he incurred mental health concerns during military service, which might have mitigated his discharge characterization of service.

Petitioner joined Marine Corps Reserves service in May 1995. A memorandum from his company First Sergeant noted, "During the October 1999 drill, I personally spoke with [Petitioner] in regards to his conflict with his religion. He expressed to me that he 'did not want to be in a billet that would cause death to his fellow man.' I offered him an opportunity to work with me doing administration and computer work. [Petitioner] agreed and said he would return on the November 1999 drill. [Petitioner] never showed for drill since that last meeting in October 1999.

Petitioner submitted VA compensation and pension rating dated April 2024 noting 70% combined service rating; however, there are no diagnoses referenced, so it is unknown what conditions rendered service-connection. He submitted a letter from his wife in support of his claim, and a letter from a LCSW noting that Petitioner has been attending therapy for PTSD since April 2019. He also submitted a letter from a psychologist dated April 2024 indicating that Petitioner has been in therapy for PTSD since December 2023.

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.

The AO concluded, "it is my considered clinical opinion there is sufficient evidence of a post-service mental health condition that is temporally remote to service. There is insufficient evidence that his misconduct could be attributed to a 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 repeated unauthorized absence from drills, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board noted that you were given multiple opportunities to address your conduct issues, including duty modification in consideration of your new religious beliefs, but you continued to commit misconduct; which ultimately led to your discharge for unsatisfactory participation in the Ready Reserve. Additionally, the Board concurred with the AO and determined that, while there is sufficient evidence of a post-service mental health condition that is temporally remote to service, there is insufficient evidence that your misconduct could be attributed to a mental health condition. As explained in the AO, 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. 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 an OTH characterization. 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,

11/23/2024

