



**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. 5192-24  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your reconsideration request 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 31 October 2024. The names and votes of the members of the panel 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). In addition, the Board considered an advisory opinion (AO) from 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.

A review of your record shows that you enlisted in the United States Marine Corps and began active duty on 2 June 1998. On 21 September 1999, you were formally counseled regarding a diagnosis of personality disorder and post-traumatic stress disorder (PTSD). On 5 October 1999, you underwent nonjudicial punishment (NJP) for underage drinking, resisting arrest, and drunk

and disorderly conduct. On 10 April 2001 you commenced a period of unauthorized absence that ended with your apprehension by civilian police and return on 13 December 2001. On 16 January 2002, you underwent a special court martial (SPCM) and pleaded guilty to violating Article 86, Uniform Code of Military Justice (UCMJ) from 10 April 2001 until 13 December 2001. You were sentenced to three months of confinement, forfeiture of pay and for three months, and a Bad Conduct Discharge (BCD). After completion of all levels of review, you were so discharged on 17 October 2003.

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 or medical discharge. You contend that you were harassed and discriminated against after your NJP. For purposes of clemency and equity consideration, the Board noted you provided your civilian medical records.

Based on your assertions that you incurred a mental health concern (MHC) during your military service, which might have mitigated your discharge character of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

During military service, the Petitioner was evaluated and diagnosed with PTSD and Personality Disorder. These diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service, since they are not typically amenable to treatment within the operational requirements of Naval Service. There is insufficient information regarding his PTSD diagnosis to attribute his misconduct to avoidance symptoms. However, throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish a nexus with his misconduct, particularly given the extended and repetitive nature of the behavior. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis.

The AO concluded, "it is my clinical opinion that, while there is evidence of a diagnosis of PTSD, there is insufficient evidence that the diagnosis of PTSD 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined, while there was evidence you had a MHC during your military service, the Board found insufficient evidence to establish that your MHC was an unfitting condition. The Board noted while in service no medical provider found your MHC limiting to your continued service. Moreover, even if a medical provider would have

referred you to a MEB, the Board noted you were ineligible for disability processing since service regulations directed misconduct processing to supersede disability processing.

Second, the Board determined your assigned characterization of service remains appropriate. 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. Further, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As explained in the AO, your personal statement is not sufficiently detailed to establish a nexus with your misconduct, particularly given the extended and repetitive nature of the behavior. 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, 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,

12/3/2024

