



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

Docket No. 5329-24

Ref: Signature Date

[REDACTED]

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 15 November September 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 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 enlisted in the U.S. Marine Corps and began a period of active duty service on 22 February 2000. Your pre-enlistment physical examination, on 4 November 1998, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. On your self-reported medical history, you disclosed a broken femur and related surgery.

On 16 January 2001, your command issued you two (2) separate “Page 11” retention warnings (Page 11) documenting: (a) your self-infliction without intent, specifically stating that you were going to drive your truck into a tree, and (b) failing to be at your appointed place of duty at the prescribed time. The Page 11s advised you that a failure to take corrective action may result in administrative separation or judicial proceedings. You did not elect to submit a rebuttal statement to either of the Page 11 entries.

On 21 June 2001, you were convicted at a Special Court-Martial (SPCM) of conspiracy to commit insurance fraud with another Marine. You were sentenced to a reduction in rank to Private (E-1), confinement for sixty (60) days, and hard labor without confinement for sixty (60) days.

You commenced an unauthorized absence (UA) on 2 November 2001. On 7 January 2002, the Convening Authority approved the SPCM sentence as adjudged. Your UA terminated with your arrest by civilian authorities in ██████████ on 13 January 2002.

On 22 January 2002, a Navy Medical Officer (MO) diagnosed you with a personality disorder. The MO noted you were not mentally ill and were responsible for your behavior.

On 1 March 2002, you submitted a voluntary written request for an administrative discharge in lieu of trial by court-martial for your long-term UA. As a result of this course of action, you were spared the stigma of a court-martial conviction for your long-term UA, as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a military judge. Included within your request was an admission that you committed the misconduct underlying your discharge request. You understood that your discharge effected by this request may be under Other Than Honorable conditions (OTH) without consideration by an administrative discharge board.

On 9 April 2002, the Separation Authority approved your voluntary discharge request. Ultimately, on 12 April 2002, you were discharged from the Marine Corps in lieu of trial by court-martial for your misconduct with an OTH characterization of service and were assigned an RE-4 reentry code.

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 changes to your reason for separation. You contend that: (a) you accepted a court martial while you were going through a psychiatric crisis, suffering from severe depression and suicidal symptoms known to the USMC at the time, (b) if the regulations mandated by “The Brandon Act” had been in place at the time of your service, the USMC likely would have discharged you administratively before your mental breakdown under honorable conditions, and (c) the Wilkie and Kurta Memos support your request because this involves the mishandling of a mental health issue and the condition that you suffered outweighs your OTH discharge. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

A licensed clinical psychologist (Ph.D.) reviewed your revised contentions and the available records and issued another AO dated 16 September 2024. The Ph.D. stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated during an inpatient hospitalization. His personality disorder diagnosis was 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. His personality disorder diagnosis was conservatively assigned, after multiple encounters with mental health staff. The Petitioner also received diagnoses of adjustment disorder and unspecified depressive disorder during military service, but it appears that characterological difficulties were his primary mental health concern. His in-service misconduct appears to be consistent with his diagnosed personality disorder. Furthermore, there are inconsistencies in the Petitioner's report in service and his current statement. In service, the Petitioner stated that financial and family stressors contributed to his depressed mood, whereas he currently argues that medical stressors resulted in depressed mood.

The Ph.D. concluded, "it is my clinical opinion that there is in-service evidence of a mental health condition that may be attributed to military service. There is insufficient to attribute his misconduct to a mental health condition, other than personality disorder."

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 misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health conditions or symptoms. 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 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 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 did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The fact remains that you left the Marine Corps while you were still contractually obligated to serve, and

you went into a UA status without any legal justification or excuse for seventy-two (72) days. This occurred immediately after you were convicted by a SPCM. The Board determined that characterization under OTH conditions is appropriate when the basis for separation 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.

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,

11/26/2024

