



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. 5547-24
Ref: Signature Date

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Dear █

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 4 December 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 the 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.

You enlisted in the Marine Corps and began a period of active duty on 9 July 2001. On 12 September 2002, you received counseling for weight control. On 24 February 2003, you again received counseling for weight control. On 26 February 2003, you received administrative remarks (Page 11) counseling, for violation of article 92, failure to obey an order, in that you were found with a paint gun in your room during barracks inspection. On 6 March 2003, you received non-judicial punishment (NJP) for sleeping on post while acting as a guard. On 6 March 2003, you were issued another Page 11 counseling for weight control. On 10 April 2003, you received NJP for sleeping on post while assigned as a supervisor. On 10 September

2003, you were sent for a medial re-evaluation and found to be overweight, not due to a pathological disorder. On 8 October 2003, after multiple additional counseling regarding your failure to achieve satisfactory progress in weight loss, you received a Page 11 granting you an eight-month extension on the body composition program. On 18 November 2003, you received a Page 11 not recommending you for advancement due to assignment on the body composition program. On 4 March 2004, you received another Page 11 not recommending you for promotion due to assignment to the weight control program. On 14 April 2004, you received a Page 11 for failure to make adequate progress after assignment to the body composition program and notifying you that you would be processed for administrative separation. On 7 May 2004, you received a Page 11 for dereliction of your duties by gaining unauthorized access to the use of computer games on the roundhouse control center panel used to monitor and control the security of deck squad bays. Consequently, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of unsatisfactory performance of duties. You waived your right to consult with counsel and to present your case to an administrative discharge board. The commanding officer forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Marine Corps with a General (Under Honorable Conditions) (GEN) characterization of service. The separation authority accepted the recommendation and you were so discharged on 8 December 2004.

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 character of service and contentions that you were discharged for being overweight and, after discharge, you were diagnosed with a mental health condition. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

Because you contend that a mental health condition impacted your misconduct, the Board considered the AO. The AO stated in pertinent part:

Petitioner submitted outpatient mental health records ranging from March 2023 to April 2024. The notes indicate a diagnosis of PTSD Unspecified. There are no additional details regarding the etiology of or rationale for the PTSD diagnosis. He also submitted VA compensation and pension rating noting 70% service connection for "Adjustment Disorder with Mixed Anxiety and Depressed Mood." There are no supplemental materials related to this diagnosis as contained within his available service record, or as provided in hi petition.

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. 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 sufficient evidence of a 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 NJPs and multiple counselings, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that it showed a complete disregard for military authority and regulations. The Board noted that you were provided opportunities to correct your conduct deficiencies during your service; however, you continued to commit additional misconduct. Finally, the Board concurred with the AO that 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. While the Board considered your post-service diagnosis of Adjustment Disorder with Mixed Anxiety and Depressed Mood, the Board also observed that your condition was documented as temporally remote to service. 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 determined significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN characterization. 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,

1/7/2025

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