



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

█
Docket No. 5565-24
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.

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 9 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 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 the advisory opinion (AO) furnished by a qualified mental health professional and your response to the AO.

You enlisted in the Marine Corps and commenced active duty on 26 June 2000. On 11 December 2001, you were issued an administrative remarks (Page 11) counseling concerning financial irresponsibility for writing numerous checks between August and October 2001, which you did not have sufficient funds to cover, resulting in a \$2,400 debt.

On 28 January 2002, you entered into a pre-trial agreement to plead guilty at Summary Court-Martial (SCM) to violating Article 121 and Article 134 of the Uniform Code of Military Justice (UCMJ) for larceny of \$151.50 and \$51.50, and wrongfully opening the mail of another Marine. Your guilty plea was entered on 14 March 2002, resulting in your conviction and sentence of

reduction to paygrade E1, forfeiture of \$736 pay per month for one month, and confinement for 30 days.

The following day, your Commanding Officer recommended your expeditious administrative separation following your diagnosis of Chronic Adjustment Disorder with Depressed Mood and Personality Disorder, stating your longstanding disorder of character and behavior was of such severity as to interfere with your ability to serve adequately in the military.

On 14 August 2002, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to pattern of misconduct, Personality Disorder, and Adjustment Disorder. You waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board. The Separation Authority subsequently directed your discharge with an OTH characterization of service; however, before that action could be taken, you committed additional misconduct.

You were charged with, and pleaded guilty at Special Court-Martial (SPCM) to, violating Article 80 of the UCMJ for attempting to steal \$495, the property of Navy Federal Credit Union. You were sentenced to confinement for 150 days, forfeiture of \$725 pay per month for a period of five months, and a Bad Conduct Discharge (BCD). After appropriate review, your sentence was approved and your discharge ordered executed. You were so discharged on 23 March 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 Memos. These included, but were not limited to, your desire to upgrade your discharge and change your narrative reason for separation to Secretarial Authority, with corresponding changes to your separation code and reentry code. You contend that your BCD was overly severe and you suffered a continued injustice resulting from your characterization of discharge. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application, including your legal brief with exhibits.

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 11 October 2024. The AO stated in pertinent part:

Petitioner submitted post-service accomplishments in support of his claim. He submitted three character references in support of his claim. 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. Furthermore, the nature of his conduct is not a common symptom or result 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 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.”

In response to the AO, you submitted additional arguments in support of your case. 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 two court-martial convictions outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and likely negative impact your repeated misconduct had on the good order and discipline of your command. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a mental health condition that may be attributed to military service, and 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. Furthermore, the Board agreed the nature of your misconduct—specifically larceny—is not a common symptom or result 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. The Board also observed that you were provided an opportunity to correct your conduct deficiencies but chose to continue to commit misconduct; which led to your BCD.

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 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,

1/7/2025

