



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

Docket No. 5596-24

Ref: Signature Date

[REDACTED]  
[REDACTED]  
[REDACTED]  
[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 8 November 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider and your AO rebuttal submission.

You enlisted in the U.S. Marine Corps and began a period of active duty service on 2 June 1983. Your pre-enlistment physical examination, on 30 September 1982, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 23 April 1985, you received non-judicial punishment (NJP) for being drunk on duty as the Assistant DNCO. You did not appeal your NJP.

On 8 January 1986, you received NJP for insubordinate conduct. You did not appeal your NJP. On the same day your command issued you a "Page 11" counseling warning (Page 11) documenting: (a) being drunk on duty, (b) authorizing the use of a government vehicle without the proper authority, (c) disrespect, and (d) insubordinate conduct. The Page 11 advised you that a failure to take corrective action may result in administrative separation or judicial proceedings. You did not elect to submit a Page 11 rebuttal statement.

On 22 July 1986, you received NJP for a violation of a lawful written order, and for wrongfully communicating a threat to a superior non-commissioned officer. You did not appeal your NJP.

Consequently, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to a pattern of misconduct. You waived your rights to consult with counsel, submit written rebuttal statements, and to request a hearing before an administrative separation board.

On 1 August 1986, your command permanently decertified you from the Personnel Reliability Program. On the same day, your commanding officer recommended to the Separation Authority (SA) that your discharge characterization be under Other Than Honorable conditions (OTH). On 25 September 1986, the Staff Judge Advocate (SJA) to the SA concluded that your separation proceedings were legally and factually sufficient. Ultimately, on 10 October 1986, you were discharged from the Marine Corps with an OTH characterization of service and were assigned an RE-4 reentry code.

On 17 December 2019, this Board denied your initial petition for discharge relief. On 25 November 2020, this Board denied your petition for reconsideration.

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, change to your narrative reason for separation, and expungement of your administrative discharge. You contend that: (a) you suffered from mental health conditions, including PTSD, depression and anxiety, brought about by your youth, lack of emotional development and maturity, poor and improper coping mechanisms, and multiple stressful situations, including the death of a close friend, your mother's arrest for murder, fears for your safety as a Marine brought about by the Marine Barracks bombing in Lebanon, and a hostile work-living environment created by a senior NCO who was bullying/harassing you, (b) your personality changed and your misbehaviors were brought about by the psychological disorders you suffered from as a result, (c) the incidents which were the basis for your separation involved a senior NCO who was bullying and harassing you, (d) such factors support changing the reason for separation to separation in the best interests of the service and/or the characterization of your discharge to a general discharge, (e) you ask for clemency because of the hardship you experienced in your life and psychologically from the stigma of the OTH, (f) you became aware of mental health disorders you suffer from in early 2023 from your primary care physician and mental health counselors, and (g) you believe that these conditions probably began while you were serving in the Marines and that they could explain your behavior then and contributed to your misconduct. 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 contentions and the available records, and issued an AO dated 11 October 2024. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

He submitted a psychological evaluation dated April 2024 whereby the psychologist concluded that the Petitioner was diagnosed with PTSD caused by exposure to trauma and harassment and hazing sustained in the military. He submitted post-service counseling records from Community Counseling Center where he attended intermittently from April 2023 to September 2024. He was diagnosed with unspecified Depressive Disorder, Generalized Anxiety Disorder, and PTSD.

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. Neither the psychological evaluation submitted nor the counseling records from Community Counseling Center elaborate on the rationale for service-related PTSD. His statement is not sufficiently detailed to provide a nexus with his misconduct.

The Ph.D. concluded, "it is my considered clinical opinion there is sufficient evidence of mental health conditions that are temporally remote to service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

Following a review of your AO rebuttal submission, the Ph.D. did not change or otherwise modify their original AO.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. First and foremost, the Board declined to expunge your administrative discharge. The Board determined that there was no credible and convincing evidence in the record regarding any command misconduct, improper motives, or abuses of discretion in the investigating, handling, and processing of your administrative separation. Based on the presumption of regularity, the Board determined that your administrative separation was legally and factually sufficient, and in compliance with all Department of the Navy directives and policy at the time of your discharge.

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 any mental health-related conditions or symptoms. Moreover,

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 cumulative 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 Board determined that an OTH characterization 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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

11/24/2024

