



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

Docket No. 5916-24

Ref: Signature Date

[REDACTED]
[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 13 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). Additionally, the Board also considered the advisory opinion (AO) furnished by a 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 17 April 1990. Your pre-enlistment physical examination, on 9 June 1989, and self-reported medical history both noted no psychiatric or neurologic conditions, symptoms, history, or counseling.

On 18 November 1991, you commenced a period of unauthorized absence (UA) from your command located at [REDACTED]. While in a UA status, you missed your unit's

movement to ██████████. Your command declared you to be a deserter on 10 December 1991. Your UA terminated with your surrender to military authorities in ██████████ on 16 December 1991.

On 13 February 1992, you received non-judicial punishment (NJP) for your 28-day UA and missing movement. You received the maximum punishment permitted at NJP. You did not appeal your NJP.

On 12 May 1992, you commenced another UA and your command again declared you to be a deserter. Your UA terminated on 8 July 1992 and your command placed you in pretrial confinement to await trial by court-martial.

On 27 July 1992, you submitted a voluntary written request for an administrative discharge for the good of the service to avoid trial by court-martial for your long-term UA. Prior to submitting this voluntary discharge request, you conferred with a qualified military lawyer, at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. You acknowledged that if your request was approved, the authorized characterization of service is under other than honorable conditions (OTH) without referral or consideration by an administrative separation board. You admitted you were guilty of your long-term UA offense. 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 likely punitive discharge from a military judge.

On or about 19 August 1992, the Separation Authority approved your discharge request for the good of the service in lieu of trial by court-martial with an OTH discharge characterization. Your separation physical examination, on 9 September 1992, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. Ultimately, on 15 September 1992, you were separated from the Marine Corps in lieu of a trial by court-martial with an OTH discharge characterization and were assigned an RE-4 reentry code.

On 7 March 2017, this Board denied your first discharge upgrade petition. You contended, in part, that PTSD was a reason for your misconduct.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and change to your reason for separation. You contend that: (a) the Marine Corps made a material error in separating you with an OTH discharge, (b) specifically, the chain of command erred in its discretionary powers when it charged you with UA and chose to dismiss you rather than provide you with the necessary rehabilitative services, (c) this oversight not only disregarded your commendable service record but also failed to consider the significant impact of your mental health that was exacerbated by your service, particularly your experiences with Operations Desert Shield, Desert Storm, and Sea Angel, (d) you have suffered with the stigma of your discharge status for nearly thirty-two (32) years, (e) you have had to live with the shame and embarrassment that accompanies anything other than an honorable discharge, and (f) you have persevered and created a successful and flourishing life for yourself and those around you despite

the negative impact surrounding your discharge status. 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 23 October 2024. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner claimed he became disillusioned with the military following his deployment, which contributed to mental health concerns and problematic alcohol use.

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given pre-service problematic alcohol and substance use that appears to have continued in service.

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

After thorough review, the Board concluded these potentially mitigating factors and contentions 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 serious misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct forming the basis of your discharge. As a result, the Board concluded that your UAs were not due to 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 serious misconduct more than outweighed the potential mitigation offered by any 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 concluded 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.

Additionally, the Board concluded that your contentions regarding your command allegedly making any material errors of judgment and/or discretion to be entirely without merit. The Board determined that there was no credible evidence in the record regarding any purported command misconduct, improper motives, or abuses of discretion or judgment in the investigating, handling, and processing of your NJP, your voluntary discharge request, and your

subsequent administrative separation. 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.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 2.8 in conduct. Marine Corps regulations in place at the time of your discharge recommended a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your serious misconduct and further justified your OTH characterization.

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 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. The simple fact remains is 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 on two (2) separate occasions for a total of eighty-five (85) days.

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,

1/7/2025
