



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

██████████
Docket No. 6574-24

Ref: Signature Date

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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 20 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 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 24 September 2001. On 25 April 2001, you acknowledged and signed the "Statement of Understanding – Marine Corps Policy Concerning Illegal Use of Drugs." Your pre-enlistment physical examination, on 27 April 2001, and self-reported medical history both noted no psychiatric or neurologic issues, history, or symptoms.

On 2 August 2002, you received non-judicial punishment (NJP) for unauthorized absence (UA), and for disobedience of a lawful order. You did not appeal your NJP. On the same day, your command issued you a "Page 11" retention/counseling warning (Page 11) documenting your NJP. The Page 11 advised you that a failure to take corrective action may result in administrative separation or limitation of further service. You did not elect to submit a Page 11 rebuttal statement.

On 6 January 2003, your command issued you a Page 11 counseling you for losing your military identification card. The Page 11 advised you that if your ID card was lost again further action will be taken. You did not elect to submit a Page 11 rebuttal statement.

On 21 January 2003, your command issued you a Page 11 retention warning documenting you loss of another military ID card. The Page 11 advised you that a failure to take corrective action may result in administrative separation or limitation of further service. You did not elect to submit a Page 11 rebuttal statement.

On 22 August 2003, you received NJP for failing to obey a lawful order or regulation by drinking underage. You did not appeal your NJP. On 25 August 2003, your command issued you a Page 11 retention warning documenting your NJP. The Page 11 again advised you that a failure to take corrective action may result in administrative separation or limitation of further service. You did not elect to submit a Page 11 rebuttal statement.

On 13 September 2005, you received NJP for: (a) driving while intoxicated on or around ██████████ ██████████, and (b) being drunk on duty. You did not appeal your NJP. On 29 June 2006, you received NJP for: (a) two (2) separate UA offenses, (b) disobedience of a lawful order, and (c) dereliction of duty when you were found drunk in your barracks when you were supposed to be standing duty. You did not appeal your NJP.

On 11 September 2006, your command notified you of administrative separation proceedings by reason of misconduct due to a pattern of misconduct and drug abuse. You expressly waived in writing your rights to consult with counsel, submit written rebuttal statements, and to request a hearing before an administrative separation board.

On 11 September 2006, your Commanding Officer (CO) recommended to the Separation Authority that you receive an under Other Than Honorable conditions (OTH) characterization of service. The CO stated, in part:

[Petitioner] joined ██████████ in April 2002. In July 2005, SNM tested positive for marijuana while attached to ██████████ ██████████. The Urinalysis was administered at the ██████████ ██████████ as part of a routine screening (his self-referral for alcohol abuse)...I recommend that he be discharged with an OTH characterization of service.

On 18 September 2006, the Staff Judge Advocate for the Separation Authority determined that your administrative separation proceedings were legally and factually sufficient. Ultimately, on 23 September 2006, you were separated from the Marine Corps for misconduct with an OTH

discharge characterization and were assigned an RE-4B 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 contentions that: (a) you came home from ██████████ in August of 2004 and started to drink every night, and after several months of drinking you asked for help, (b) during the intake phase of your substance abuse counseling you tested positive for marijuana and you were kicked out of the program, (c) your chain of command also stripped your qualifications as a dual plane captain away, (d) a few days before your EAS date you brought up to your Gunnery Sergeant that you were to leave the Marine Corps soon, and at that time the Sergeant Major of ██████████ took your paperwork wherever it needed to go so that you were released with an OTH, (e) this type of discharge has affected your life in every way possible, and (f) you know that you made some mistakes along the way but you like the Marine Corps let you down when you thought you were doing everything right. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records, and issued an AO dated 10 October 2024. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His alcohol use 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. Temporally remote to his military service, he has received treatment for a substance use disorder. Unfortunately, he has provided no medical evidence to support his claims of PTSD and TBI. Although there is evidence of a head injury in service, there is no evidence of on-going treatment or symptoms consistent with TBI. While it is possible that the Petitioner's alcohol use may have worsened following combat exposure, there is insufficient evidence to attribute his misconduct to symptoms of PTSD or TBI, given behavior prior to his deployment that appears to have continued afterwards.

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

Following a review of your AO rebuttal submission, the Ph.D. revised the conclusion to read, "[t]here is post-service evidence from civilian providers of a diagnosis of PTSD."

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, a purported traumatic brain injury (TBI) and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such TBI and/or 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 a TBI or mental health-related conditions or symptoms. Even if the Board assumed that your misconduct was somehow attributable to TBI or any mental health conditions, the Board unequivocally concluded that the severity of your cumulative pattern of misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional, willful, and persistent, 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 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,

1/10/2025

