



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. 7098-24
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 13 January 2025. 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, 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). The Board also considered the advisory opinion (AO) furnished by 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 Reserve on 29 September 1994 and acknowledged the requirement to complete initial active duty for training (IADT), followed by forty-eight scheduled drills and no less than fourteen days of active duty for training (ADT) per year for four years. You completed a period of IADT from 23 May 1995 to 17 November 1995.

On 3 March 1996, you were issued an administrative remarks (Page 11) counseling concerning your failure to attend regularly scheduled reserve training. On 4 April 1998, you received Page 11 counseling regarding your unauthorized absence (UA) on 3-4 April 1998. You were advised

that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 3 May 1998, you were issued Page 11 counseling for UA from 30 April 1998 to 3 May 1998.

After attempting to hand deliver documents to your home of record, your command delivered, via certified mail that you signed for on 29 January 1999, notice of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of unsatisfactory participation in the ready reserve. On 18 February 1999, after you did not respond to the letter of notification, your commanding officer recommended your separation with an OTH discharge; noting that you had a total of forty-six unexcused absences. The separation authority subsequently directed your discharge with an OTH characterization of service and you were so discharged on 27 April 1999.

You previously applied to this Board for an upgrade to your characterization of service where you contended that your discharge was unjust due to financial circumstances. The Board denied your request on 13 August 2015.

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 change your discharge characterization of service and your contentions that you were suffering from depression when you enlisted, your recruiter lied to you about education benefits, you have been your mother's primary caregiver since 2015 and, post-service, you earned a Bachelor's degree, became a Pentecostal elder, and have worked as a police officer and security officer for government contracts. For purposes of clemency and equity consideration, the Board considered your statement, the letters of recommendation, work documents, article, degree certificate, and personal documents you provided.

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 17 November 2024. The AO stated in pertinent part:

Petitioner contends he incurred mental health issues (Depression) during military service, which may have contributed to the circumstances of his separation from service.

There is no evidence that the Petitioner was diagnosed with a mental health condition during his military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. He was counseled and warned three times regarding his unsatisfactory participation in the Marine Corps Reserves. He indicated that his reason for absence was depression and that he was in counseling with a youth pastor during his time in the reserves. He submitted a letter from that youth pastor, however the letter does not indicate that he was ever in counseling or that he suffered from depression. He has provided no medical evidence in support of his claims.

The AO concluded, “it is my clinical opinion that there is insufficient evidence 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your unauthorized absences, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board noted that you were given multiple opportunities to address your conduct issues but you continued to commit misconduct; which ultimately led to your discharge for unsatisfactory participation in the Reserve. Further, the Board found no evidence that your recruiter misrepresented military educational benefits. Finally, the Board concurred with the AO and determined that there is there is insufficient evidence of a mental health condition that may be attributed to military service and insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, you provided no medical evidence in support of your claim. 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 concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation and commends 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,

2/3/2025

