



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

██████████
Docket No. 7193-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 6 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 the 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO). Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case on the evidence of record.

You were granted an enlistment waiver for marijuana use and a minor in possession. You also signed a Marine Corps policy concerning illegal use of drugs. You enlisted in the Marine Corps

and began a period of active duty on 15 March 2004. During your enlistment you received four nonjudicial punishments (NJPs) for two specifications of disobeying a lawful order, failure to go to your appointed place of duty, disrespect in language, drunk and disorderly conduct, and violating a lawful order. After three of your four NJPs, you were issued administrative remarks documenting your infractions and advising you that failure to take corrective action could result in administrative separation. In August 2006, you were diagnosed with alcohol dependence with episodic drinking behavior. Consequently, you were notified of your pending administrative processing by reason of pattern of misconduct (POM); at which time you waived your rights to consult with counsel and to present your case to an administrative discharge board. On 27 November 2006, the separation authority directed you be discharged with an Other Than Honorable (OTH) characterization of service but suspended your discharge for a period of 12 months.

In February 2007, although you reported participation in Intensive Outpatient Alcohol Treatment, you continued to consume alcohol and were not actively engaged in the program. Following a medical evaluation, it was recommended that you be administratively separated due to alcohol treatment failure. On 8 March 2007, you were hospitalized for suicidal ideation and diagnosed with mental health conditions. However, you declined a substance abuse treatment program screening, leading to the revocation of your suspended discharge. Consequently, on 8 May 2007, you were discharged with an Other Than Honorable (OTH) characterization of service for Pattern of Misconduct.

The Board carefully considered all potentially mitigating factors to determine whether the interest 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 your contentions that you faced mental and emotional challenges during service. Specifically, (1) while stationed in ██████████, you experienced severe depression, anxiety, and PTSD due to intense training, constant deployment readiness, and witnessing the toll of combat on fellow Marines, (2) traumatic incidents, including a ballistic missile launch by ██████████, worsened hyper-vigilance, nightmares, and mental health struggles, (3) despite losing rank, you maintained significant responsibilities, including managing the motor pool and fuel farm and earning a Letter of Accommodation, (4) you experienced a mental breakdown during a training exercise, linked to prescribed Zoloft, which led to a psychiatric ward stay and subsequent discharge in 2007, (5) your discharge has profoundly affected your life, denying you access to VA services, (6) currently in recovery and on psychiatric medication, you are committed to improving your life and being a good father, (7) your military medical records evidence of PTSD, depression, and Generalized Anxiety Disorder, and (8) you seek a discharge upgrade to regain access to essential VA support and to reclaim your life. For purposes of clemency and equity consideration, the Board considered the personal statement you submitted in support of your application.

Based on your assertions that you incurred Post Traumatic Stress Disorder and Traumatic Brain Injury (TBI) during military service, which may have contributed to the circumstances of your discharge, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO on 13 November 2024. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated during an inpatient hospitalization. His mental health diagnoses were 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. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service, since they are not typically amenable to treatment within the operational requirements of Naval Service. It is difficult to attribute his misconduct to mental health concerns incurred during military service, given pre-service behavior that appears to have continued in service. There is insufficient information regarding a purported TBI to attribute his misconduct to undiagnosed symptoms of TBI. There is insufficient evidence of a diagnosis of PTSD and the Petitioner has provided no medical evidence to support his claims. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion that there is in-service evidence of mental health concerns that may be attributed to military service. There is insufficient evidence of TBI or a diagnosis of PTSD. There is insufficient evidence to attribute his misconduct to PTSD, TBI, or another mental health condition incurred in military service."

After a thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard for military authorities and regulations. Additionally, the Board concurred with the AO that there is insufficient evidence to link your misconduct to PTSD, TBI, or any other mental health condition incurred during military service. As noted in the Advisory Opinion (AO), there is a lack of information regarding a purported TBI to attribute your misconduct to undiagnosed symptoms of TBI. Additionally, there is insufficient evidence of a PTSD diagnosis, and you have not provided any medical documentation to support your claims. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities.

As a result, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service. 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 the 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 is attached 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,

1/23/2025

