



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

Docket No. 7201-24
Ref: Signature Date

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, 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional and your response to the AO.

You enlisted in the Marine Corps and commenced active duty on 9 December 1980.

On 27 September 1981, you were seen in the emergency room after your bicycle was struck by a car; causing you to roll onto the hood and strike your knee on the windshield. Your only complaint at that time was left knee pain over kneecap.

On 18 January 1982, you were issued an administrative remarks (Page 11) counseling concerning deficiencies in your performance and/or conduct, specifically for unauthorized absence (UA) and your personal appearance. On 27 September 1982, you received non-judicial punishment (NJP) for unauthorized absence (UA), two specifications of failure to obey a lawful

order, disrespectful language at the duty hut, and wrongfully using provoking words. On 22 June 1983, you were issued a Page 11 counseling concerning your positive urinalysis for marijuana. 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 28 June 1983, you were issued Page 11 counseling for UA and false official statement. On 1 July 1983, you received NJP for UA from appointed place of duty and wrongful use of marijuana. You were issued Page 11 counseling regarding a pattern of involvement of a discreditable nature with military authorities and again advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

On 1 September 1983, you received NJP for larceny by wrongfully using a telephone credit card belonging to another Marine. On 8 December 1983, you received Page 11 counseling for your personal appearance, UA, disobeying lawful orders, disrespect toward seniors, use of illegal substances, and fraudulent use of a credit card belonging to another. On 4 May 1984, you received Page 11 counseling for failure to report to your assigned job and making false statements to a non-commissioned officer. On 11 May 1984, you were issued Page 11 counseling for UA from your appointed place of duty. On 4 October 1984, you received NJP for three specifications of UA from your appointed place of duty and disobeying a lawful order.

On 14 November 1984, you submitted a written request for an undesirable discharge in order to avoid trial by court-martial for failure to go to your appointed place of duty, failure to obey a lawful order, violating a regulation, and breaking restriction. Prior to submitting this 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. Your request was denied on 21 November 1984 and, on 27 November 1984, you were found guilty at Special Court Martial (SPCM) of disobeying a lawful order from a staff non-commissioned officer, violating a general regulation, and four specifications of failure to go to your appointed place of duty. You were sentenced to forfeitures and confinement.

Consequently, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to pattern of misconduct. You elected to consult with legal counsel and waived your rights to submit a statement or have your case heard by an administrative discharge board. The separation authority subsequently directed your discharge with an OTH characterization of service and you were so discharged on 20 February 1985.

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 incurred PTSD due to being struck by a car while on your bike, were not given the opportunity to seek legal counsel, were denied medical care for your injuries, and your commanding officer was belligerent and made an example out of you because he had a vendetta against anyone with light duty status. For purposes of clemency and equity consideration, the Board considered your statements, the Department of Veterans Affairs decision letter, and the 2024 spine MRI results 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 16 November 2024. The AO stated in pertinent part:

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

Petitioner submitted VA compensation and pension rating noting service connection for treatment purposes only for "Other Specified Depressive Disorder and Alcohol Use Disorder, moderate (claimed as PTSD)."

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 has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his requested change for narrative reason for separation. Furthermore, although it was possible that his accident caused some emotional duress, the nature and pervasiveness of his misconduct cannot be said to be caused thereof.

The AO concluded, "it is my clinical opinion that there is sufficient evidence of a post-service mental health condition. There is insufficient evidence to attribute his misconduct to a mental health condition."

In response to the AO, you provided a personal statement that supplied additional clarification of the circumstances of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

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 NJPs and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your repeated misconduct and the likely negative impact your conduct had on the good order and discipline of your command. The Board also considered the fact that your misconduct included a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. 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 due to a pattern of misconduct. Additionally, the Board concurred with the AO and determined that, while there is sufficient evidence of a post-service mental health condition, there is insufficient evidence to attribute your misconduct to a mental health condition. Finally, the Board noted that you provided no evidence to support your allegations against your commanding officer and, contrary to your assertion, there was ample evidence in your record of you being provided legal counsel.

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, 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

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Executive Director

Signed by: ■