



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

██████████
Docket No. 7244-24
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 27 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, 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). 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 enlisted in the U.S. Marine Corps and began a period of active duty on 29 October 1980. On 10 May 1981, you commenced a period unauthorized absence (UA) that ended on 10 March 1984. On 16 April 1984, you were convicted by a Special Court-Martial (SPCM) of the UA

totaling 1,035 days. You were sentenced to confinement at hard labor for three months, forfeitures of \$100.00 pay per month for five months, and a Bad Conduct Discharge (BCD). However, your BCD was suspended for 12 months. On 17 August 1984, your suspended BCD was vacated and ordered executed as a result of your continued misconduct; specifically, failure to obey a lawful order, disrespectful in language, resisting apprehension, and two instances of drunk and disorderly conduct. On 18 March 1985, you were discharged with a BCD.

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: (1) you are in need of VA services to obtain vital spinal oncology-related care, (2) you faced discrimination at your first duty station, (3) your unit had heavy LSD use and you were slipped LSD at the enlisted club; which you reported to your chain of command and Chaplain, (4) fellow Marines also slipped LSD into your sandwich, (5) despite your efforts to turn yourself in to law enforcement, you received no assistance, (6) you felt ashamed your actions and incurred depression/PTSD, (7) you continue to suffer from neurobehavioral effects but has been clean and sober since February 1987, and (8) the Marine Corps was the cause of your LSD-related issues. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

Based on your assertions that you incurred mental health issues during military service, which may have contributed to the circumstances of your separation from service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO on 25 November 2024. The AO stated in pertinent part:

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. Although it appears as though he received psychiatric treatment sometime in the past, he did not submit any notes thereof. 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. Additional records (e.g., active duty medical records, post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his separation) would aid in rendering an alternate opinion.

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 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 SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard of military authority and regulations. Additionally, the Board noted that you were granted significant clemency when your BCD was initially suspended, and you were restored to duty; yet you continued to engage in misconduct. Further, the Board concurred with the AO that

there is insufficient evidence of a mental health condition that may be attributed to your military service and misconduct. As explained in the AO, although it appears as though you received psychiatric treatment sometime in the past, your submitted evidence did not contain any notes. Additionally, your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct. 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. Furthermore, the Board noted you provided no evidence, other than your statement, to substantiate your contentions that you were drugged by other service members, reported the incidents of innocent ingestion to your chain of command, or that you were unsuccessful in turning yourself into law enforcement over the approximately three year period you were UA. Thus, the Board was not persuaded by your contentions.

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 and 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 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,

2/14/2025

