



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

██████████
Docket No. 7360-24
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 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 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.

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 based on the evidence of record.

You enlisted in the Marine Corps and commenced active duty on 26 March 1991. On 5 November 1991, you were issued an administrative remarks (Page 11) counseling concerning deficiencies in your performance and/or conduct related to a stolen Armed Forces ID Card and failure to safeguard government property. On 2 June 1992, you were issued a second Page 11

for failure to show up for formations on time and failure to care for your personal weapon. On 16 July 1992, you were issued a third Page 11 for writing a check with insufficient funds.

On 31 August 1992, you received non-judicial punishment (NJP) for unauthorized absence (UA) from your appointed place of duty and violation of a lawful general order by having a visitor of the opposite sex in your assigned room. On 28 April 1993, you received a second NJP for showing disrespect towards a corporal. On 26 May 1993, you were convicted at Special Court-Martial (SPCM) of violating Article 123a of the Uniform Code of Military Justice (UCMJ) for writing checks with intent to defraud totaling \$3,660.74, and for writing checks with intent to defraud totaling \$795.00. You were sentenced to confinement for 100 days and reduction to paygrade to E1.

Consequently, you were notified of pending administrative separation processing with an Other Than Honorable (OTH) discharge by reason of misconduct – pattern of misconduct. You consulted with counsel and elected an administrative discharge board (ADB). The ADB found that you had committed misconduct and recommended that you be discharged under OTH conditions. Your commanding officer and the separation authority concurred with the ADB and you were so discharged on 20 April 1994. However, during your administrative separation processing, you received a final NJP for UA for failure to go to your appointed place of duty.

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 upgrade your discharge and your contentions that you were suffering from injuries incurred in the line of duty and undiagnosed PTSD during service. You further contend that errors occurred during your ADB; including failure to investigate and address allegations of white supremacy and harassment against you by your non-commissioned officer (NCO) leadership. For purposes of clemency and equity consideration, the Board considered the documents you provided in support of your application, including the continuation of your DD Form 149, your VA Rating Decision indicating your diagnosis of PTSD (for treatment purposes only) resulting from the Gulf War, seven advocacy letters, and your personal statement.

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 13 November 2024. The AO noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His insomnia 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. A civilian psychiatrist clinician has diagnosed him with PTSD that is temporally remote but attributed to military service. Unfortunately, there is insufficient evidence to attribute his misconduct to PTSD or a mental health condition. It is difficult to attribute financial mismanagement to symptoms of

PTSD. 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 post-service evidence from a civilian psychiatrist of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD."

In response to the AO, you submitted a letter and documentation from a psychiatrist affiliated with ██████████ restating you were harassed by your peers. In addition, you provided a rebuttal response from your designated representative providing further arguments in support 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 misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, 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 undesirable discharge¹. Your conduct not only showed a pattern of misconduct but was sufficiently pervasive and serious to negatively affect the good order and discipline of your command. Additionally, the Board concurred with the AO and determined that although there is post-service evidence from a civilian psychiatrist that you were diagnosed with PTSD that may be attributed to military service, there is not enough evidence to attribute your misconduct to that diagnosis. Specifically, the Board agreed with the AO that "it is difficult to attribute financial mismanagement to symptoms of PTSD." That said, the Board also agreed that additional records (e.g., post-service mental health records describing your diagnosis, symptoms, and their specific link to your misconduct) may aid in rendering an alternate opinion. In the end, the Board was not persuaded by your contentions or those raised by your representative that your misconduct was the result of your mental health issues or due to the actions of white supremacists².

Regarding your allegations of error in your ADB proceedings, the Board reviewed the ADB record and found no evidence of error. Additionally, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Should you have additional records showing evidence of error, you may submit them to the Board in a new application and they may aid in rendering an alternate opinion.

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 you for your post-discharge accomplishments, even in light of the Kurta, Hagel, and Wilkie Memos and

¹ The Board noted that you continued your pattern of misconduct even as you were awaiting your final discharge.

² The Board observed that you argue your conduct was the direct result of actions of white supremacists and your chain of command. However, this contradicts your statement that all your "leadership" advocated for your retention.

