



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. 7610-24
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 24 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider and your AO rebuttal submission.

You originally enlisted in the U.S. Marine Corps and began a period of active duty service on or about 5 July 1984. Your enlistment physical examination, on 14 May 1984, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 23 March 1988, you reenlisted and commenced another period of active duty.

On 29 July 1988, you commenced a period of unauthorized absence (UA) that terminated on 12 August 1988. On 15 August 1988, you commenced a UA that terminated on 17 August 1988. On 26 August 1988, you commenced another UA that terminated on 30 September 1988.

On 4 October 1988, you received non-judicial punishment (NJP) for the wrongful use of cocaine, as well as your three (3) separate UAs. A portion of your NJP was suspended. You did not appeal your NJP.

Following your NJP, you commenced another UA on 14 November 1988 that terminated on 18 November 1988. On 21 November 1988, you commenced yet another UA that terminated on 1 December 1988. On 21 December 1988, your command vacated and enforced the suspended portion of your October 1988 NJP due to your continuing misconduct.

On 3 March 1989, you received NJP for insubordinate conduct, failing to obey a lawful order, and resisting arrest. You did not appeal your NJP. On 7 March 1989, your command vacated and enforced the suspended portion of your 3 March 1989 NJP due to your continuing misconduct.

On 23 June 1989, per your guilty pleas, you were convicted at a General Court-Martial (GCM) of conspiracy to possess cocaine, conspiracy to distribute cocaine, and two (2) separate specifications of the wrongful possession with intent to distribute cocaine. The Court sentenced you to confinement for twelve (12) months, total forfeitures of pay, a reduction in rank to the lowest enlisted paygrade (E-1), and to be discharged from the Marine Corps with a Bad Conduct Discharge (BCD).

On 29 August 1989, a clemency board voted unanimously against any form of clemency, and also denied your request for restoration. On 21 November 1989, the Convening Authority (CA) approved the GCM sentence and findings. On 6 December 1989, your separation physical examination and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 14 March 1990, the U.S. Navy-Marine Corps Court of Military Review affirmed the GCM findings and sentence as approved by the CA. Ultimately, upon the completion of GCM appellate review in your case, you were discharged from the Marine Corps with a BCD and assigned an RE-4B reentry code on 10 October 1990.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and change to your reason for separation. You contend that: (a) your request is made for reasons of material error and material injustice, (b) before the end of your first enlistment and your second enlistment, you found out that your wife was having an affair with a superior officer, (c) you attempted to take your mind off your situation through physical training but ultimately sought out alcohol to cope with your depression and emotional distress, (d) when you returned to California a year later and discovered your wife carrying a commanding officer's unborn, you felt completely hopeless, your existing conditions worsened, and you began searching for a

stronger means of coping, like self-medicating with crack cocaine, (e) your chain of command made a material error of discretion when they pursued court-martial charges against you instead of helping to rehabilitate you into the quality Marine you once were, (f) it has been over 30 years since your discharge and since then you have worked hard to become a servant of the community, and (g) the BCD has served its punitive purpose and it would be an injustice to allow it to remain on your record. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO dated 15 December 2024. As part of the Board's review, the Board considered the AO. 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. Furthermore, his description of events that caused PTSD does not meet criteria for PTSD as per DSM-5. 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.

The Ph.D.'s 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."

Following a review of your AO rebuttal submission, the Ph.D. did not change or otherwise modify their original AO.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such purported mental health conditions were related to or mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your cumulative misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional, willful, and persistent, and demonstrated you were unfit for further service. The Board also 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.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this was not a case warranting any clemency as you were properly convicted at a SPCM of serious misconduct. The Board determined that characterization with a BCD appropriate when the basis for discharge is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. The Board determined that illegal drug distribution and use is contrary to Marine Corps core values and policy, renders such Marines unfit for duty, and poses an unnecessary risk to the safety of their fellow Marines. Additionally, you also left the Marine Corps while you were still contractually obligated to serve and you went into a UA status without any legal justification or excuse on no less than five (5) separate occasion for approximately sixty-five (65) days.

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 in 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 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,

2/10/2025

