



**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. 8281-24  
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 14 February 2025, has carefully examined your current request. 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 to the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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) of a qualified mental health provider and your response to the AO.

You enlisted in the Marine Corps under a reserve option contract and served an initial period of active duty for training from 14 November 1994 through 27 May 1995; at which time you were transferred to a reserve drilling unit.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) alleging that your rights were prejudiced by not receiving proper counseling prior to your discharge. You submitted a highly detailed legal brief which contended that your discharge was inconsistent

with standards of discipline because you were not given an opportunity to transfer to a unit closer to your home after the closure of ██████████, that an Other Than Honorable characterization was inconsistent with your service record and post-service character, that you experienced extenuating family and personal circumstances which impacted your ability to drill, and that your discharge characterization was due to an arbitrary and capricious decision and an abuse of authority. The NDRB considered your request and denied relief on 18 January 2005.

You then applied to this Board; which considered your previous request on 8 August 2006. At that time, you contended that most of your problems were associated with your unit's unwillingness to transfer you to a reserve center closer to your residence and you submitted the same documents to the Board which had previously been submitted to the NDRB with the addition of a supplemental argument to your legal brief. At that time, the Board requested an AO from Commandant of the Marine Corps (Judge Advocate Division) which was unfavorable in regard to your contentions of legal error or injustice in your administrative separation processing. At that time, you did not submit evidence or contentions that mental health issues affected the circumstances of your missed drill periods. The summary of your record of reserve service is substantially unchanged from what is discussed in the Commandant of the Marine Corps (Judge Advocate Division) AO.

You now seek reconsideration of additional claims of injustice. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie, Kurta, and Hagel Memos. These included, but were not limited to, your desire to upgrade your discharge and to change your narrative reason for separation to "Secretarial Authority" and your reentry code to "RE-1." In addition to your previous contentions that it was unfair to reassign you to duty in ██████████ when you were supposed to be assigned to ██████████ at the time you enlisted into the Marine Corps Reserve, you also contention that your ability to routinely attend drills was adversely impacted by post-traumatic stress disorder and mental health considerations. With respect to these contentions, your personal statement asserts that you requested a transfer to be closer because you couldn't afford the drive but were told it would reflect negatively on you, you suffered serious injuries from a vehicle accident while returning from weekend drill after falling asleep at the wheel on the long return drive, your accident resulted in being laid off from your civilian job and unemployed, this further impacted your ability to commute to attend drill, you sought work with your local police service but academically failed, this also negatively impacted how you were treated at your reserve unit, the military police who also served as civilian police were viewed more favorably whereas you were ridiculed for failing to qualify, your car was repossessed due to financial issues related to your unemployment, you opted for a motorcycle and suffered a second accident, the lost time from your surgery impacted your reputation with the reserves and resulted in your placement on weight control during post-surgery recovery, and you were bullied and falsely blamed for making another Marine late when you attempted to commute together. In support of your contentions and for the purpose of clemency and equity consideration, you submitted multiple statements of your own, witness statements from service peers, a character letter, a law enforcement certificate and awards, ██████████ training records, a private investigator license, an employment letter from a government contractor, a psychologist's letter regarding your PTSD, your claim statement to the Department of Veteran Affairs (VA), and a letter from a psychologist regarding the custody of your child.

Because you contend that post-traumatic stress disorder (PTSD) or another mental health condition affected the circumstances which resulted in your discharge, the Board also considered the AO from the mental health professional. 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. He has provided post-service evidence of mental health conditions that are temporally remote to service. 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 sufficient evidence of temporally remote mental health conditions. There is insufficient evidence to attribute his misconduct to a mental health condition."

In response to the AO, you provided additional evidence in support of your application. After reviewing the rebuttal evidence, the AO remained unchanged.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your unsatisfactory performance in the Marine Corps Reserve, 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. Your drilling records indicate that you attended drill routinely from May 1995 through approximately August 1998; with your missed drill periods beginning in September of 1998. During the period that you attended drills, you were issued administrative counseling on at least three separate occasions for a variety of deficiencies to include dishonored checks, failure to comply with Marine Corps Institute policy regarding your Marine Corps education and training, and for body composition failure. Further, there is no indication that you attempted to coordinate properly through your chain of command regarding the difficulties you purport to have encountered with the distance of your assignment. The Board noted that reserve units routinely undertake significant effort to coordinate with service members who encounter difficulties with drill attendance. Your records indicate that you simply stopped attending drills beginning September 1998 and that pattern continued into February 1999. While the Board considered your arguments regarding the difficulties you experienced with attending drills, they determined you had a legal obligation to continue to do so. Unexpectedly absenting yourself from your command placed an undue burden on your chain of command and fellow service members, and likely negatively impacted mission accomplishment.

Additionally, the Board concurred with the AO that the evidence of your mental health conditions is temporally remote and that there is insufficient evidence to attribute your misconduct to a mental health condition. 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.

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,

3/13/2025

