



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. 8447-24
Ref: Signature Date

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Dear ██████████

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 28 February 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 enlisted in the U.S. Marine Corps and began a period of active duty service on 6 August 1987. Your pre-enlistment physical examination, on 27 August 1986, and self-reported medical history both noted no psychiatric or neurologic issues, history, conditions, or symptoms.

On 31 October 1987, you were diagnosed with bacterial meningitis, microcytic anemia (non-iron

deficient), and hypokalemia (resolved). Following your diagnoses and treatment, you were discharged without any medications and directed to go back to duty after seven (7) days of convalescent leave.

On 13 March 1989, your command issued you a "Page 11" retention/counseling warning (Page 11) documenting your failure to maintain sufficient funds in your checking account. The Page 11 advised you that a failure to take corrective action may result in administrative or judicial proceedings. You did not elect to submit a Page 11 rebuttal statement.

On 1 May 1989, you commenced an unauthorized absence (UA). Your UA terminated on 5 May 1989. Upon your return, you received non-judicial punishment (NJP) for your 4-day UA. You did not appeal your NJP.

On 13 July 1989, you commenced another UA. Your UA terminated on 28 July 1989. On 31 July 1989, you commenced another UA. Your third UA terminated on 2 August 1989. On 19 August 1989, you received NJP for three (3) separate UA specifications. You did not appeal your NJP.

On 25 October 1989, your command issued you a Page 11 documenting your frequent involvement with the UCMJ (a.k.a. a pattern of misconduct). The Page 11 advised you that further deficiencies in performance will result in disciplinary action and in processing for administrative separation under other than honorable conditions (OTH). You did not elect to submit a Page 11 rebuttal statement.

On 22 November 1989, you received NJP for two (2) separate UA specifications. You did not appeal your NJP. On 5 December 1989, you commenced another UA that terminated on 9 December 1989.

On 5 January 1990, you were convicted at a Summary Court-Martial (SCM) of: (a) your 4-day UA, (b) willful disobedience of a superior commissioned officer, (c) two separate specification of making a false official statement, and (d) nine (9) separate instances of breaking restriction. You were sentenced to forfeitures of pay and confinement for thirty (30) days. The Convening Authority approved the SCM sentence and ordered it executed.

You were released from confinement on 29 January 1990 and commenced yet another UA on 1 February 1990. Your UA terminated on 3 February 1990. On 21 February 1990, you received NJP for your UA. You did not appeal your NJP.

On 12 March 1990, your command notified you of administrative separation proceedings by reason of misconduct due to a pattern of misconduct. On 12 March 1990, you waived your rights to consult with counsel and to elect your right to request a hearing before an administrative separation board.

The Staff Judge Advocate for the Separation Authority (SA) determined that your administrative separation proceedings were legally and factually sufficient. On 29 March 1990, the SA approved and directed your OTH discharge for a pattern of misconduct with an RE-4 reentry

code. Your separation physical examination noted no psychiatric or neurologic issues, conditions, or symptoms. Ultimately, on 3 April 1990, you were separated from the Marine Corps for a pattern of misconduct with an OTH discharge characterization and were assigned an RE-4 reentry code.

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 for a discharge upgrade and change to your reason for separation. You contend that: (a) it has been more than thirty-five (35) years since your discharge and you have worked hard to overcome your discharge status, (b) those who know you best attest to your remarkable character and your dedication to serving others, (c) your chain of command made a material error of discretion when they ignored your medical issues and chose not to discharge you alongside the other Marines after you recovered from spinal meningitis, (d) you nearly died due to a prolonged ordeal with spinal meningitis that hospitalized you in the ██████████ Naval Hospital for an extended period, (e) the Marine Corps discharged the other Marines who fell ill with spinal meningitis but did not discharge you after you recovered, and your illness left you physically compromised, (f) you never felt that you could carry out the physical demands of the Marine Corps yet your command chose not to discharge you when they discharged the other Marines affected by the same illness, and (g) your chain of command made a material error of discretion in not discharging you after you recovered from the spinal meningitis even though the illness left you unable to carry out the physical demands of the Marine Corps. 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 7 January 2025. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

There is evidence that the Petitioner suffered from a fairly traumatic bout of spinal meningitis in October 1987. Although it is possible that this left him experiencing mental health symptoms, there is no evidence of this as contained within his record. 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 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 and contentions 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 of any nexus

between any mental health conditions and/or related symptoms and your misconduct and determined that there was insufficient evidence to support the argument that any such mental health conditions 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. 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.

Additionally, the Board was not persuaded by your contentions regarding your command allegedly making material errors of judgment and/or discretion. The Board determined that there was no credible and convincing evidence in the record regarding any purported command misconduct, improper motives, or abuses of discretion or judgment in the investigating, handling, and processing of your administrative separation. The Board unequivocally determined that your administrative separation was legally and factually sufficient, and in compliance with all Department of the Navy directives and policy at the time of your discharge.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 3.6 in conduct. Marine Corps regulations in place at the time of your discharge recommended a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board noted that your record included four (4) NJPs, two (2) Page 11 entries, and one court-martial. The Board concluded that your cumulative misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your serious misconduct and a repeated failure to conform to basic military standards of good order and discipline, all of which further justified your OTH characterization.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine.

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,

3/18/2025

