



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. 8550-24
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 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 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.

You enlisted in the Marine Corps and commenced active duty on 16 September 1996. On 27 January 1997, you received non-judicial punishment (NJP) for violating an order by drinking alcohol underage. You were additionally issued an administrative remarks (Page 11) counseling concerning deficiencies in your performance and/or conduct related to NJP. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

On 18 July 1997, you were issued a Page 11 counseling wherein you were advised you were diagnosed with personality disorder. On 17 September 1997, you were issued a Page 11

counseling for deficiency because you lost an ID card. On 22 September 1997, you were issued a Page 11 counseling wherein you were informed, after having been medically evaluated, you were found competent to return to full duty. On 29 December 1997, you again were issued a Page 11 counseling for deficiency, after again losing an ID card.

On 25 May 1998, you received NJP for UA from your appointed place of duty – your physical therapy appointment. You were again issued a Page 11 counseling not only for being UA but for making your command believe you had an appointment at Naval Hospital ██████████

Following this, on 5 June 1998, you again received NJP, on this occasion for insubordination in manner to a non-commissioned officer by refusing to put on gear. As a result of this misconduct, in addition to your other discrepancies for the reporting period, you were assigned a performance proficiency mark of 2.0 and conduct mark of 2.9; for failure to maintain the standards of proficiency and conduct required of a Marine of your grade.

Consequently, you were notified of pending administrative separation processing with an Other Than Honorable (OTH) discharge by reason of misconduct due to minor disciplinary infraction. You consulted with counsel and waived all rights available to you in the process; but for the right to obtain copies of documents used in the separation process. After completion of all levels of required review, you were so discharged on 4 August 1998.

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 characterization and change reason for separation and separation code to reflect a Secretarial Authority discharge. You contend that error occurred when your Recruiter stated you would be a translator but failed to convey you must be a U.S. citizen in order to be assigned as a translator, your requests for transfer were met with hostility rather than explanation, you were harassed by your squad instructor who called you a “terrorist” and “shit-bird,” he permitted other Marines to verbally and physically assault you, you were not offered support and no corrective action was taken when other Marines destroyed your personal property, your misconduct was minor in nature with one instance of drinking underage, missing a physical therapy appointment, and not putting on gear, your misconduct was infrequent with the latter two NJP’s occurring within two weeks of one another and no counseling opportunity for corrective action, you are now an upstanding member of your community and an influential filmmaker in Tampa, you have overcome many obstacles, and your character is not reflected in your current discharge. For the purposes of clemency and equity, you provided a legal brief with exhibits, including service record and medical records documents, your personal statement, and advocacy letters from five former Marines.

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 29 November 2024. The AO noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His adjustment and personality disorder diagnoses were 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. There is also evidence the Petitioner received medical treatment for the rifle accident, but the incident occurred after the majority of his misconduct and could not be considered a factor in his service behavior. There is insufficient evidence of a diagnosis of PTSD. Unfortunately, the Petitioner's misconduct appears to be consistent with problematic characterological traits rather than evidence of PTSD or another mental health condition. 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 insufficient evidence of a diagnosis of PTSD. There is in-service evidence of a diagnosis of Adjustment Disorder. There is in-service evidence of a head injury. There is insufficient evidence to attribute his misconduct to PTSD, TBI, or another mental health condition, other than personality disorder."

In response to the AO, you provided additional 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, outweighed these mitigating factors. In making this finding, the Board considered the repetitive nature of your misconduct and found that your conduct showed significant disregard for military authority and regulations. Further, the Board observed you were given multiple opportunities to correct your conduct deficiencies and chose to continue to commit misconduct; which led to your OTH discharge. 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 there is insufficient evidence of a diagnosis of PTSD, and insufficient evidence to attribute your misconduct to PTSD, TBI, or another mental health condition other than personality disorder. As the AO noted, your misconduct appears to be consistent with problematic characterological traits rather than evidence of PTSD or another mental health condition. Lastly, the Board agreed additional records, as described above, may aid in rendering an alternate opinion. 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 and commends you for your post-discharge accomplishments, 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,

2/26/2025

