



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

Docket No. 8759-24  
Ref: Signature Date

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 19 March 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 (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. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

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 began a period of active duty on 2 December 1986. On 27 October 1988, you received non-judicial punishment (NJP) for assault. On 17 August 1990, you were found guilty by a general court-martial (GCM) of conspiracy to obtain services under false pretenses, violation of a lawful general order by driving on base with revoked driving

privileges, resisting apprehension, false official statement, and wrongfully appropriate an automobile. As punishment, you were sentenced to confinement, forfeiture of pay, reduction in rank, and a Dishonorable Discharge (DD).

On 3 October 1991, the Naval Clemency and Parole Board directed that the DD be mitigated to a Bad Conduct Discharge (BCD) and that, prior to your discharge, you are afforded 30 days inpatient substance abuse treatment at a Department of Veterans Affairs (VA) Medical Center.

On 14 April 1993, the U.S. Navy-Marine Corps Court of Military Review affirmed the GCM findings and sentence as directed by the Naval Clemency and Parole Board. Ultimately, upon the completion of appellate review in your case, you were so discharged from the Marine Corps on 22 August 1994.

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 character of service so that you may qualify VA benefits. You contend that: (1) your court-martial was unfair, harsh, and unjust, (2) the incident involving the vehicle was appropriated by another individual, (3) there was no conspiracy to issue travel tickets, (4) you did not have access to official travel vouchers or official tickets, and (5) due to your current health condition that includes other physical injuries you sustained during your service; you desire to seek treatment utilizing VA medical benefits. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 27 January 2025. 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. Although he submitted post-service evidence of diagnoses of PTSD and Major Depressive Disorder, his description of precipitating events does not meet criteria for PTSD. Furthermore, the letter submitted does not mention the etiology of or rationale for his given diagnoses. The totality of his misconduct is not typical behavior caused by either PTSD or depression. 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 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."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evident by your

NJP and GCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard of military authority and regulations. The Board observed you were given an opportunity to correct your conduct deficiencies but 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 was not persuaded by your contentions regarding your GCM conviction and observed you pleaded guilty to all but one of the charges that formed the basis of your punitive discharge. The Board noted that a plea of guilty is the strongest form of proof known to the law, and based upon your plea of guilty alone and without receiving any evidence in the case, a court-martial can find you guilty of the offenses to which you pleaded guilty. The Board concluded that you knowingly and voluntarily pleaded guilty to such offenses because you were indeed guilty.

Further, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service and there is insufficient evidence to attribute your misconduct to a mental health condition. As the AO explained, your description of precipitating events do not meet the criteria for PTSD. Furthermore, the evidence submitted does mention the etiology of or rationale of your given diagnoses. The Board agreed there is no evidence that you were diagnosed with a mental health condition during your military service or that you exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. Therefore, the Board determined that the record clearly reflected that your active-duty misconduct was willful and that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities.

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 Memo 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,

4/3/2025

