



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

Docket No. 8837-24
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 10 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the Marine Corps and commenced active duty on 28 March 1990. You deployed with your unit in support of [REDACTED] 28 November 1990 to 14 April 1991. On 27 December 1991, you were issued an administrative remarks (Page 11) counseling concerning deficiencies in your performance and/or conduct. 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 28 January 1992, you received non-judicial punishment (NJP) for unauthorized absence (UA). On 23 June 1992, you were issued Page 11 counseling for failure to conform to regulation by possessing hard alcohol in the barracks. 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 7 July 1992, you were issued Page 11 counseling for fraudulent use of an Armed Forces identification (ID) card for allowing another Marine to use the back portion to appear to be of legal drinking age. You were again advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 21 August 1992, you received NJP for false official statement whereby you, with intent to deceive, signed a Page 11 counseling stating you lost your ID card and for wrongfully and falsely altering your ID card. On 25 November 1992, you received NJP for UA.

On 23 February 1993, you were convicted at Special Court Martial (SPCM) of three specifications of failure to go to appointed place of duty, two specifications of UA from restricted muster, and three specifications of wrongfully, with intent to defraud, pretending that you would pay for taxi services without intent to pay. You were sentenced to reduction in rank to E-1, forfeitures, confinement, and a Bad Conduct Discharge (BCD). You submitted an appeal to the Navy-Marine Corps Court of Criminal appeals where you contended that you were not competent to stand trial or to participate in your defense. The Court directed a Rules for Courts-Martial (RCM) 706 hearing and determined that you were mentally responsible for your conduct and were capable of participating meaningfully with counsel in your defense. The court further noted: "The appellant did not raise the issue at trial nor has he introduced any evidence to counter witness accounts of his apparently rational behavior at the time the offenses were committed... We find from the record that the appellant's behavior on the dates in question was not only calm and rational... but actually affirmatively demonstrated that, notwithstanding the diagnosed mental condition, the appellant, at the time of each offense, knew what he was doing and his actions were wrong." Subsequently, the findings and sentence in your SPCM were affirmed and you were issued a BCD on 8 May 1997.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 3 January 2012, based on their determination that your discharge was proper as issued.

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 change your discharge characterization of service and your contentions that you are in need of Department of Veterans Affairs (VA) benefits and that you had an undiagnosed mental health condition while in service that mitigates your misconduct. For purposes of clemency and equity consideration, the Board considered your statement, the civilian psychological evaluation from 1993, and the letter from a nurse practitioner of 2017.

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 27 January 2025. The AO stated in pertinent part:

Petitioner contends he incurred mental health issues during military service, which may have contributed to the circumstances of his separation from service.

Petitioner submitted a [2017] letter from a nurse practitioner indicating treatment past two years for PTSD and Bipolar I Disorder. He submitted an admission summary from Memorial Medical Center (August 1993) noting “bad thoughts and voices which have given him evil ideas.” The author noted possible diagnosis of Schizotypal Personality Disorder, and “Undiagnosed psychiatric illness, most likely an acute psychotic episode; possible underlying bipolar disorder.” Accompanying notes reveal that the Petitioner was treated with electroconvulsive Therapy (ECT).

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 submitted post-service mental health records that reveal some potentially serious conditions with possible psychotic symptoms. It is possible that he was suffering from prodromal Bipolar I Disorder symptoms in service; if so, that could account for the poor impulsivity and lack of judgment (attempting to fraud taxi services, altering ID card, and stealing). The letter submitted from a treating nurse practitioner lacks sufficient detail in order to provide a nexus between his post-service diagnoses and in-service misconduct. However, records from Memorial Medical Center note treatment covering a period when he was in service as well as noted psychotic and manic symptoms.

The AO concluded, “it is my clinical opinion that there is sufficient evidence of a mental health condition that may be attributed to military service. There is sufficient 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 that your misconduct, as evidenced by your NJPs and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your repeated misconduct and the likely negative impact your conduct had on the good order and discipline of your command as well as the discrediting effect your actions had on the Marine Corps. The Board noted that you were given multiple opportunities to address your conduct issues but you continued to commit misconduct, which ultimately led to your BCD. 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. The Board also considered the results of the appellate court’s RCM 706 hearing that found you to be mentally responsible for your conduct in spite of a mental health diagnosis. While the Board acknowledged the findings of the AO, 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 misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful 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. 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 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,

3/12/2025

