



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. 9158-24
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.

Although you did not file your application in a timely manner, the Board waived the statute of limitation 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 21 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 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 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) of a qualified mental health provider and your response to the AO.

You enlisted in the Marine Corps and began a period of active duty on 19 September 1994. On 22 March 1995, you were medically recommended for administrative separation, due to erroneous enlistment, following review of a knee injury which was assessed to have resulted from a condition which existed prior to your enlistment. At that time, it was assessed that it was unlikely you would be able to fulfill the duties and obligations of a Marine. However, rather than process you for separation, you were ordered to report for duty to Commanding General, 2d Marine Division. You failed to report as ordered and remained in an unauthorized absence (UA)

status, from 9 June 1995 through 18 August 1995, until your apprehension by civilian authorities.

On 1 September 1995, you were involved in a motor vehicle accident when a military vehicle rolled over while you were not wearing a seat belt. Following the accident, you were treated for back, neck, and arm pain. On 6 October 1995, you requested separation in lieu of trial for charges pertaining to your prolonged period of UA and involuntary return to military authority through apprehension. In this request, you acknowledged the likelihood of a discharge under Other Than Honorable (OTH) conditions but requested consideration of a General (Under Honorable Conditions) characterization. An accompanying endorsement from your military defense counsel explained mitigating circumstances regarding your family situation and stated that you had joined the Marine Corps to make your parents happy. Your commanding officer recommended approval of your request and noted that you were emphatic at having decided to join the Marine Corps for the wrong reasons and that your subpar performance was exacerbated by recurring family-related problems. Likewise, a subsequent endorsement to your request described that you had been “miserable ever since boot camp” because being a Marine was not who you were. You also reported that your negative, depressed mood was a significant factor in your decision to absent yourself without authority.

While pending decision on your request, on 23 October 1995, you sought emergency care for “accidentally” ingesting antifreeze; however, you were discharged without significant medical requirements. On 21 November 1995, your request for separation in lieu of trial was approved and you were so discharged under OTH conditions on 6 December 1995.

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 change your narrative reason for separation to Secretarial Authority. You contend that your discharge warrants upgrade on the basis of clemency factors, to include that:

- (a) you had a single UA offense of a “relatively short duration;”
- (b) mitigating factors lessen the severity of your offense, such as your two near death experiences during your service which you contended resulted in post-traumatic stress disorder (PTSD) and led you to go UA and get discharged;
- (c) your service to your community is admired by many;
- (d) you have remained a hard working professional in your career at ██████████;
- (e) you have full custody of your grandson and have improved his well-being considerably;
- (f) it has been 28 years since your discharge and the purpose of the adverse characterization has been served; and,
- (g) you accepted responsibility for your misconduct and continues to live with your PTSD symptoms.

For the purpose of clemency and equity consideration, you submitted your counsel's brief, a personal statement, seven letters in support of your character, and policy memo references.

Because you contend that post-traumatic stress disorder (PTSD) or another mental health condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

Petitioner contended he incurred PTSD following two hospitalizations in service, including a serious rollover accident and when another Soldier put antifreeze in his Gatorade. He claimed that these incidents contributed to fear for his safety and subsequent UA. He provided evidence of character and post-service accomplishment.

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no medical evidence in support of his claims. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, as his UA was before his MVA and accidental ingestion of antifreeze. Inconsistencies in the Petitioner's report and his record raise doubt regarding his candor or the reliability of his recall."

The AO concluded, "it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition."

In response to the AO, you provided additional evidence in support of your application. After reviewing your 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 request to be discharged in lieu of trial by court-martial, 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. Additionally, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service and insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As explained by the AO, both of the "near death" incidents, upon which you premise your contended traumatic experiences, occurred after your prolonged UA period. Therefore, the Board concluded that neither of those incidents could be said to have a nexus with your UA misconduct and 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.

Further, the Board did not concur with your contention that your UA offense was for a relatively short duration, considering that it lasted longer than a 30-day period and long enough for you to have been initially reported as a deserter. Additionally, the Board observed that your UA was only terminated after you were physically apprehended by civilian authorities; rather than by your voluntary surrender. Moreover, the Board considered that you voluntarily requested

administrative separation under OTH conditions to escape trial by court-martial and, in doing so, already received a substantial benefit. The Board found that you obtained the benefit of your bargain with a discharge which was appropriate at the time it was issued in relation to your overall service record and your misconduct.

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 good character, 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,

4/10/2025

