



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. 9161-24
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 reconsideration 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 18 August 1978. Your enlistment physical examination, on 28 January 1978, and self-reported medical history both noted no psychiatric or neurologic conditions, history, or symptoms.

On 16 September 1980, you commenced an unauthorized absence (UA). Your UA terminated

on 31 October 1980. You were issued “straggler’s orders” with instructions to report back to your command by 12:00 noon on 1 November 1980. When you did not report back by the prescribed time and date, you effectively commenced another UA. Your command declared you to be a deserter and your second UA terminated, on 20 February 1981, following your arrest by civilian authorities.

On 8 July 1981, contrary to your plea, you were convicted at a Special Court-Martial (SPCM) of your 111-day UA. You received a sentence of confinement at hard labor for forty-five (45) days. On 26 August 1981, the convening authority (CA) approved the SPCM sentenced but suspended the punishment for six (6) months.

On or about 19 August 1981, you commenced another UA. Your command declared you to be a deserter and dropped you from the rolls. Your UA terminated on 20 October 1993.

On 23 March 1994, you commenced yet another UA. Your UA terminated on 15 April 1994. Your confinement physical examination, on 7 July 1994, and self-reported medical history both noted no psychiatric or neurologic conditions, history, or symptoms. Your drug screening evaluation, on 3 August 1994, indicated an amphetamine dependence and an alcohol dependence in remission. Your separation physical examination, on 1 September 1994, and self-reported medical history again both noted no psychiatric or neurologic conditions, history, or symptoms.

On 9 September 1994, pursuant to your guilty plea, you were convicted at a second SPCM of your 23-day UA, and for two (2) separate specifications of the wrongful use of a controlled substance (methamphetamine). You were sentenced to confinement for seventy-three days, a reduction in rank to the lowest enlisted paygrade (E-1), forfeitures of pay, and a discharge from the Marine Corps with a Bad Conduct Discharge (BCD). On 23 February 1995, the CA approved the SPCM sentence as adjudged.

On 31 August 1995, the U.S. Navy-Marine Corps Court of Criminal Appeals affirmed the SPCM findings and sentence as approved by the CA. Upon the completion of SPCM appellate review in your case, on 4 December 1995, you were discharged from the Marine Corps with a BCD and were assigned an RE-4 reentry code.

On 20 November 2019, this Board denied your initial petition for discharge upgrade relief. You did not proffer any mental health-related contentions or supporting evidence at such time.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and change to your narrative reason for separation. You contend that: (a) based on your statements, your sudden change in behavior following the murder of your grandmother and sister, and the medical officer's diagnosis of abuse disorders, it is clear you were experiencing a mental health condition that led to your substance abuse, which ultimately led to your court-martial and BCD, (b) you clearly were suffering from an undiagnosed mental health disorder that adversely impacted your behavior on active duty, (c) once you received proper treatment for your mental health, you were able to gain control over your substance abuse addiction and have remained sober since, (d) you

humbly request that the Board recognize your untreated mental health conditions you endured during your active duty service, leading to your alcohol and substance abuse and, ultimately, your SPCM and BCD, (e) your actions, which you regret deeply, were the result of undiagnosed PTSD, and the alcohol and substance dependency disorders were the symptoms of such condition, (f) you have taken steps to correct your path in life and dedicated yourself to helping others find their sobriety, and (g) you have suffered for decades from the choices you made and the lack of treatment available in the Marine Corps during your service. 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 6 January 2025. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His alcohol and substance use 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. Substance use and problematic alcohol use are incompatible with military readiness and discipline and do not remove responsibility for behavior. Unfortunately, there is no evidence of a mental health concern other than alcohol and substance use disorder and the Petitioner has provided no evidence. There is insufficient evidence to attribute his misconduct to alcohol or substance use disorder, given his history of UA early in his military career, as well as later in his career when he was diagnosed with alcohol and substance use disorder.

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, other than a possible alcohol or substance use disorder. There is insufficient evidence to attribute his misconduct to a mental health condition."

Following a review of your AO rebuttal, the Ph.D. did not change or otherwise modify their original AO.

After thorough review, the Board concluded these potentially mitigating factors 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 serious 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. Moreover, 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 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.

The Board noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that, despite your contentions, this was not a case warranting any clemency as you were properly convicted at a SPCM of serious misconduct. The Board determined that characterization with a BCD appropriate when the basis for discharge is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. The Board determined that illegal drug use is contrary to Marine Corps core values and policy, renders such Marines unfit for duty, and poses an unnecessary risk to the safety of their fellow Marines. The simple fact remains is that you also left the Marine Corps while you were still contractually obligated to serve, and you went into a UA status without any legal justification or excuse multiple times.

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

