



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

██████████
Docket No. 9236-24
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 5 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, 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)/mental health condition (MHC) (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). Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the U.S. Marine Corps and began a period of active duty on 16 December 1997. On 13 July 1998, you began a period of unauthorized absence (UA) that ended on 24 July 1998. You were subsequently issued a counseling warning concerning your UA from your appointed place of duty. On 3 August 1998, you began another period of UA that ended on 29 August 1998. On 2 September 1998, you were convicted by a summary court-martial (SCM) for your 11 day UA, 26 day UA, and failure to go to your appointed place of duty. You were sentenced to restriction, forfeiture of pay and reduction in rank. On 14 September 1998, you were issued a

counseling warning for your pattern of misconduct and advised failure to take corrective action may result in an administrative separation or judicial proceedings.

You began another period of UA on 20 November 1998 that ended on 28 November 1998. On 21 January 1999, you were convicted at your second SCM for your eight day UA and wrongfully appropriating a vehicle of another Marine. You were sentence to restriction. On 6 February 1999, you started a third period of UA that ended on 19 April 1999. On 10 May 1999, you were convicted by a special court-martial (SPCM) for your 72 day UA. You were sentence to confinement, forfeiture of pay, and a Bad Conduct Discharge (BCD). After completion all levels of review, you were so discharged on 31 August 2000.

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 for a discharge upgrade and contentions that you were repeatedly physically, mentally, emotionally abused and violated during boot camp, these issues are the root cause of your UA violations, you suffered from a traumatic brain injury in 1998 and never received treatment, and this injury resulted in long-term physical, cognitive, and emotional effects. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board review process, a licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO. The Ph.D. stated in pertinent part:

There is no evidence that he was diagnosed with a head injury or a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable TBI or mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. 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 Ph.D. concluded, "it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD, TBI, or another mental health condition that may be attributed to military combat exposure. There is post-service from the Petitioner of harassment in service. There is insufficient evidence to attribute his misconduct to PTSD, TBI, or another mental health condition."

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 SCMs and SPCM, 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. The Board observed you were given multiple

opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which 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. Further, the Board concurred with the AO and determined there is insufficient evidence to attribute your misconduct to PTSD, TBI, or another mental health condition. As explained in the AO, there is no evidence that you were diagnosed with a head injury or a mental health condition in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable TBI or mental health condition. 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. 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. 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,

3/21/2025

