



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

[REDACTED]
Docket No. 9432-24
Ref: Signature Date

[REDACTED]
[REDACTED]
[REDACTED]

Dear [REDACTED]

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 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 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. 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 service on 24 July 2006. Your enlistment physical examination, on 7 October 2004, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 18 June 2007, your command issued you a "Page 11" warning (Page 11) for failing to be at your rifle range formation. The Page 11 advised you that a failure to take corrective action and any further UCMJ violations may result in judicial or adverse administrative action, including but not limited to, administrative separation.

On 14 August 2007, you received non-judicial punishment (NJP) for dereliction in the performance of your duties when you failed to stay awake on fire watch and were found sleeping with all weapons from HQ platoon unsecured. You did not appeal your NJP.

On 1 January 2008, you received NJP at [REDACTED], [REDACTED] for making a false official statement and larceny of an MP3 player from a fellow Marine. A portion of your NJP was suspended. You did not appeal your NJP.

On 9 March 2008, the suspended portion of your NJP was vacated and enforced due to your continuing misconduct. On 10 March 2008, you received NJP again for making a false official statement and larceny of an NVG mount from a fellow Marine. You did not appeal your NJP.

On 2 August 2008, your command issued you a Page 11 counseling you regarding the appropriate hygiene practices which you were in violation of on numerous occasions. The Page 11 advised you that a failure to take corrective action will result in disciplinary action through judicial proceedings and/or processing for administrative discharge. You did not submit a Page 11 rebuttal statement.

On 10 July 2009, pursuant to your guilty pleas, you were convicted at a Special Court-Martial (SPCM) for: (a) making a false official statement, and (b) two (2) separate larceny offenses. Your SPCM sentence included a reduction in rank to Private (E-1), forfeitures of pay, confinement for six (6) months, and a discharge from the Marine Corps with a Bad Conduct Discharge (BCD). On 23 September 2009, the Convening Authority (CA) approved the SPCM sentence as adjudged, except suspended any confinement in excess of 120 days.

On 31 December 2009, the U.S. Navy-Marine Corps Court of Criminal Appeals affirmed the SPCM findings and sentence as approved by the CA. Ultimately, upon the completion of SPCM appellate review in your case, you were discharged from the Marine Corps with a BCD on 15 March 2010.

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 change to your reason for separation and separation code. You contend that: (a) documentation of your state of mental health, to include temporary mental impairment due to personal family crisis, was ignored and not provided by defense counsel, (b) adequate defense was not properly afforded by counsel at your SPCM, and (c) your mental health concerns contributed to your actions resulting in your SPCM and BCD. 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 7 February 2025. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner submitted a psychological evaluation dated December 2018, which noted Depressive Disorder NOS, and PTSD with delayed onset. He submitted one page

of what appears to be from an article. 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 submitted a post-service psychological evaluation noting diagnoses of Depressive Disorder and PTSD; however, the evaluation lacks sufficient detail and did not extrapolate on results from each of the psychodiagnostic tests administered. Furthermore, the evaluation notes PTSD from his deployment, however his MOS was Food Service Specialist, and thus his description of events that took place while on deployment are questionable. Given his history of making false official statements, he may lack candor. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his requested change for narrative reason for separation.

The AO concluded, “it is my considered clinical opinion there is sufficient evidence of post-service mental health diagnoses. There is insufficient evidence that his misconduct could be attributed to a mental health condition.”

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 misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to any 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.

Additionally, the Board unequivocally concluded that you did not substantiate or corroborate your contentions regarding any ineffective assistance of counsel (IAC) at your SPCM. The Board noted that there is no evidence in the record indicating that you did not receive adequate representation or experienced IAC. During the SPCM appellate review process, the Board also noted that no substantive, evidentiary, or procedural defects were discovered, and the Board was not willing to re-litigate well-settled facts that are no longer in dispute from a final SPCM conviction that occurred over fifteen (15) years ago for offenses where you pleaded guilty.

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.

Finally, the Board took into consideration that your record contained seven separate offenses involving dishonesty over a period of approximately 18 months. These offenses involved larceny from your fellow Marines and lying about your conduct. 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.

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,

3/31/2025

