



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

██████████
Docket No. 9578-24
Ref: Signature Date

████████████████████
██████████████████████████████
██
████████████████████
████████████████████

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 18 April 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 to 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 22 August 1995. On 6 December 1996, you received nonjudicial punishment (NJP) for violation of the Uniform Code of Military Justice (UCMJ) under Article 78 by having knowledge of stolen property and concealing the information in order to hinder a criminal investigation, and under Article 81 for conspiring with another junior enlisted Marine to say nothing about the theft or about the fact that you knew another Marine was involved in hiding the stolen property. Following this NJP, you were issued administrative counseling; addressing the alcohol-related incident which resulted in your NJP, advising you of specific corrective actions, informing you how to obtain

assistance in correcting your deficiencies, and advising you that failure to take corrective action could result in administrative separation or limitation on further service. You signed an acknowledgment of this counseling and elected not to make a statement in response.

On 24 November 1997, you received emergency medical care after a possible acetaminophen overdose; specifically, your medical records reflect that you took two Percocet, which had been prescribed for a prior injury, and you also took two Tylenol. Your medical records reflect that you expressed feeling depressed and reported partner relational problems. Later, you received several mental health sessions during which you were psychologically evaluated. During those sessions, you reported a history of between five to ten suspensions from high school due to truancy and a history of alcohol-related incidents. The psychological evaluation tool used to assess your mental health indicated results of problems with anger and a lack of candor in admitting your faults.

On 29 January 1998, you were issued administrative counseling advising you that you were being retained in the Marine Corps but that you needed to take corrective action with respect to noted deficiencies, to include a lack of judgment and maturity, as reflected by your self-incapacitation for performance of duties through your prior wrongful indulgence in legally prescribed drugs in a manner inconsistent with medical guidance. You signed this counseling entry acknowledging receipt; however, you again received emergency medical care on 26 February 1998 for homicidal ideations. During this evaluation, you reported a chronic history of thoughts centered on themes of violence toward others, to include visualizing hurting someone at whom you were angry, a significant history of over 50 suspensions from school, mostly for fighting, which occurred because you would physically beat other children who angered you, a history of taking lunch money from other students and threatening a teacher, a history of approximately 10 fights since entering the Marine Corps, frequent receipt of extra military instruction, and enjoying driving at high speeds and driving your motorcycle while intoxicated. You were diagnosed as having an Anti-social Personality Disorder (PD) and were recommended for administrative discharge due to unsuitability.¹

A disciplinary memorandum dated 13 March 1998 documented that you had left after field day formation and failed to help your roommate clean your room, resulting in a failed inspection. It also documented that you later failed to be present for formation or re-inspection and admitted that you were in your rack asleep at the time you missed formation. A follow-up psychiatric recommendation was submitted to your chain of command, reiterating the recommendation for your separation and advising that you had a character disorder but were considered responsible for your behavior. It specified that future failure of satisfactory performance would constitute cause for separation on the grounds of unsuitability due to PD without the requirement for further mental health evaluation or a medical board. Additionally, a letter from Director, ██████████, dated 12 May 1998, documented your irresponsible use of your prescription medication but advised that you did not meet DSM-IV criteria for alcohol or drug abuse or dependence. It recommended that you continue to be seen weekly by the psychology clinic until your discharge.

¹ In this regard, the Board noted that a medical recommendation for unsuitability due to a diagnosed PD would have proceeded under the basis of convenience of the government due to unsuitability and would not have been considered a medical disability.

On 20 May 1998, you were notified via naval letter of processing for administrative separation by reason of misconduct due to minor disciplinary infractions evidenced by your repeated incidents of misconduct. After consulting legal counsel, you elected to waive your right to a hearing before an administrative separation board. You executed your waiver via an endorsement to your notification letter; wherein you acknowledged that your commanding officer was recommending that you receive a discharge under Honorable conditions but that the least favorable discharge you might receive was still under Other Than Honorable (OTH) conditions. Of note, with respect to allegedly “missing” enclosures, your commanding officer forwarded his recommendation for your discharge under Honorable conditions on 20 May 1998 via a second endorsement to your original notification. This endorsement, which included, at enclosure (6) thereto, the previously referenced 12 May 1998 letter from Director, ██████████. Commanding General, ██████████, approved your separation under OTH conditions by reason of misconduct due to minor disciplinary infractions and you were so discharged on 9 June 1998.

You previously applied to the Naval Discharge Review Board (NDRB) contending that you should have been discharged either for medical disability or due to your diagnosed personality disorder and submitted evidence of post-service conduct for consideration of clemency. Your request was considered on 21 August 2008 and denied.

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 to Honorable conditions, to change your narrative reason for separation to “Hardship” with a separation code of “KDH,” to change your reentry code to “RE-1,” and, to expunge your PD diagnosis from your service records. You contend that you were misdiagnosed with anti-social PD during military service when you were, instead, suffering from post-traumatic stress disorder (PTSD) and Major Depression. You assert that you were not properly separated because: (1) you were misdiagnosed with anti-social PD, which negatively affected the processing and review of your administrative discharge and (2) your discharge characterization did not take into account the mitigating factors of your mental health concerns; which you claim directly caused the actions and behaviors that led to your discharge. In support of your contentions and for the purpose of clemency and equity consideration, you submitted service health records, your divorce records post-discharge mental health records, to include your Department of Veterans Affairs (VA) medical records, a letter from your mother, and a letter from a licensed clinical social worker (LCSW) which states that, “at this time,” you do not meet the diagnostic criteria for an anti-social PD. You also submit a statement from a former military police officer and friend attesting to your mutual experience in fleeing the ██████████ in ██████████ after both of you had agreed to participate in investigative activities aimed toward curtailing their operations. This same former Marine submitted a letter disagreeing with your PD diagnosis based upon his personal observations and his purported his status as an intern in a doctoral program aimed toward his licensure as a clinical psychologist

You further contend the following specific errors and/or injustices:

(1) Error due to lack of a page 11 / paragraph 6105 counseling entry required by the Marine Corps Separations and Retirements Manual (MARCORSEPMAN) and injustice due to the resulting lack of an opportunity for rehabilitation opportunity. Specifically, you claim that

you never received the required counseling prior initiation of processing for separation. You believe that, if you had been given proper counseling, you may have had an opportunity to explain your situation, to include your mental health concerns, receive treatment, and remedy your deficiencies without the need for administrative separation;

(2) Insufficient evidence to support the basis for separation of misconduct due to minor infractions. Specifically, you allege error in that there were only two documented instances of minor misconduct and that paragraph 6210 of the MARCORSEPMAN requires at least three infractions, which you claim resulted in an injustice, in that it held you to a higher standard than other Marines;

(3) Injustice due to duress. Specifically, you claim that your discharge resulted from an ultimatum issued without consideration of your acute trauma. You elaborate that, in response to the 13 March 1998 disciplinary memorandum, you were given the option of accepting NJP with a punishment which would include going to the correctional custody unit (CCU), which you describe as a “return to boot camp” or, alternatively, being processed for administrative separation;

(4) Abuse of discretion. Specifically, you allege that the Commanding General’s direction to issue your discharge under OTH conditions disregarded your commanding officer’s recommendation that you be discharged under Honorable conditions, which you believe took into account mitigating factors of your mental health concerns and your “clean” service record; and,

(5) Acute mental health distress. Specifically, and notwithstanding the detailed findings of the NDRB, you believe that you should have been separated for hardship or for medical reasons based on your mental distress from the breakdown of your marriage, which exacerbated your purported PTSD incurred from a traumatic, near-death incident with the ██████████ mafia during your tour of duty in ██████████.

Additionally, you contend that your post-discharge behavior and conduct renders your discharge characterization unjust in that it does not accurately reflect your character or accomplishments in the years since your separation. You further submitted a 1993 certificate for participation in high school football, a 1996 letter of appreciation for your participation in a career day event, a 1998 letter from your local chief of police expressing a desire to sponsor you in a basic law enforcement training school, a 2000 certification card attesting that you were an active member of the volunteer firefighters, a 2004 workshop certificate of continuing education in client retention; a 2004 certificate for participating in a charitable event, a photo of a powerlifting association coin, a 2020 ordination in the ██████████, 2021 certificates of completion in psychic mediumship, Shamanic healing, Reiki master teacher training; and two recent character letters.

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

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His personality disorder diagnosis was 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 clinicians. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service, since they are not typically amenable to treatment within the operational requirements of Naval Service.

Temporally remote to his military service, he has received a diagnosis of Major Depressive Disorder, which appears unrelated to his military service, as it is associated with a single, moderate episode, rather than a chronic condition. Additionally, if his diagnosis is a chronic condition continuing from military service to the present time, this provides additional support for his in-service personality diagnosis. The Diagnostic and Statistical Manual of Mental Disorder, 5th Edition (DSM-V) notes that “chronicity of depressive symptoms substantially increases the likelihood of underlying personality...disorder.”

There is no medical evidence of a diagnosis of PTSD. Unfortunately, the absence of current symptoms of personality disorder, as noted by his current civilian mental health provider, is insufficient evidence of error in his service diagnosis. The DSM-V notes that “antisocial personality disorder has a chronic course but may become less evidence or remit as the individual grows older, particularly by the fourth decade of life.”

The Petitioner’s in-service misconduct appears to be consistent with his diagnosed personality disorder, rather than evidence of PTSD or another mental health condition incurred in or exacerbated by military service.

The AO concluded, “it is my clinical opinion that there is insufficient evidence of error in the in-service diagnosis. There is insufficient evidence of PTSD or another mental CUI health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition, other than personality disorder.

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 NJP and counselings, 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 OTH discharge. 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.

With respect to your desire to expunge records pertaining to your in-service PD diagnosis, the Board concurred with the AO that you were appropriately referred for psychological evaluation and properly evaluated during your enlistment. This resulted in a PD diagnosis based on observed behaviors and performance during your period of service and the information you chose to disclose at the time; which the Board considers to be more temporally reliable than your or your mother’s post-service recall of events from more than 25 years prior. Additionally, as

noted in the AO, the current absence of symptoms of PD documented in the letter from your current LCSW is insufficient to render your in-service PD diagnosis erroneous; given that antisocial PD has a chronic course but may become less evidence or remit as the individual grows older, particularly by the fourth decade of life, which the Board found to be consistent in your case. As a result, the Board concluded that your PD diagnosis was not erroneous and, therefore, found your contention in that regard to be without merit.

With respect to your specific, enumerated contentions the Board found as follows:

(1) Although you contend that you were not issued the required corrective administrative counseling in order to provide you with an opportunity to correct your deficiencies, the Board found the evidence of record to directly contradict this assertion. Your official military personnel file (OMPF) clearly documents two separate 6105 counseling entries advising you in a manner substantially consistent with that outlined in applicable regulations, both of which you signed and acknowledged. Therefore, the Board found this contention to be without merit.

(2) The Board found that the evidence of record substantiates more than three instances of misconduct in your OMPF. First, your NJP in December of 1996. Second, your administrative counseling in January of 1998 for self-incapacitation for the performance of duties through prior wrongful indulgence of legally prescribed drugs. And finally, multiple offenses documented in the 13 March 1998 disciplinary memorandum. Accordingly, the Board also found this contention to be without merit.

(3) The Board also disagreed with your argument that being afforded the opportunity to either accept NJP or be processed for involuntary administrative separation placed you under “duress.” In fact, your commanding officer could have punished you for the multiple misconduct allegations documented in the 13 March 1998 memorandum, even while processing you for separation. Rather, the Board noted that the opportunity for your NJP punishment to award CCU rather than restriction was intended to afford you precisely the rehabilitative opportunity which you now claim that you were denied. As a result, the Board found this contention to be without merit.

(4) The Board also was not persuaded by your argument that the direction to discharge you under OTH conditions was an abuse of discretion. Although your immediate commanding officer recommended your discharge under Honorable conditions based on the factors known to him at that time, discretion to determine the appropriate characterization of discharge remained with the Commanding General; as was noted in your initial notification and acknowledgment. Absent evidence to the contrary, the Board applied a presumption of regularity regarding the actions of government officials in the execution of their duties and found insufficient evidence of either error or injustice with respect to your discharge under other than honorable conditions at the time it was issued. Thus, the Board found this contention to be without merit.

(5) Finally, with respect to your continued contentions regarding a potential medical disability discharge, the Board concurred with the findings of the NDRB. Specifically, although you provided a medical report which advised that you were psychologically unsuited for continued military service, you were already being processed for administrative separation for a pattern of minor disciplinary infractions with service already marred by a nonjudicial punishment, as an accessory after the fact, and a retention warning for improper use of

prescription drugs. Additionally, you were awaiting NJP for a period of unauthorized absence. Applicable disability regulations did not preclude your processing for a disciplinary separation even if your separation for medical reasons might have otherwise been appropriate; because regulations stipulate that separations for misconduct take precedence over potential separations for medical reasons. Furthermore, you were not, at that time, in the process of being discharged for medical reasons or under medical review for disability. To the extent that you alternatively argue that you should have received a hardship discharge, the Board found no circumstances of record which would have qualified for such a request during your military service.

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 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,

5/8/2025

