



Docket No. 9663-24
Ref: Signature Date

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 12 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 (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) furnished by a qualified mental health professional and your response to the AO.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 8 January 2001. On 3 July 2001, you were issued an administrative remarks (Page 11) counseling concerning your failure to muster for field day. On 12 October 2001, you received non-judicial punishment (NJP) for two specifications of unauthorized absence (UA) totaling ten days and insubordinate conduct. On 18 October 2001, you commenced a period of UA that concluded upon your surrender to

military authorities on 12 December 2007; a period totaling 2246 days. After entering into a pretrial agreement, you were found guilty by a summary court-martial (SCM) of absence without leave on 9 April 2008.

Consequently, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to commission of a serious offense. You waived your right to consult with counsel and present your case to an administrative discharge board. The commanding officer forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Marine Corps by reason of misconduct due to commission of a serious offense with an Other Than Honorable (OTH) characterization of service. The separation authority approved the recommendation and you were so discharged on 15 July 2008.

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 to upgrade your discharge character of service and contentions that: (1) in “October 2002” you received harassment from your Sergeant, (2) you reported several times you were being harassed but nothing was done, (3) your grandmother passed away and your Sergeant would not allow you to take leave to attend her services, (4) as a young kid and not understanding, you decided to leave and figured that no one would listen to you, (5) upon your return to the Marine Corps, you served faithfully and owned up to what you had done, and (6) you went through several things that caused your PTSD. For purposes of clemency and equity consideration, the Board noted you submitted personal statement but no supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board’s review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 21 January 2025. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition during his military service. He has provided no evidence to support his claims. Unfortunately, there is insufficient evidence of clinical symptoms in service or to attribute his misconduct to a mental health condition. 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 AO concluded, “it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD.”

In response to the AO, you submitted additional medical records to include Department of Veterans Affairs (VA) records listing a probable diagnosis of PTSD attributing to participation in ■. The Board observed you were in a UA status from October 2001 and found no evidence that you participated in any combat operations or were present in ■. After reviewing your rebuttal evidence, the AO remained unchanged.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. In particular, the Board felt your extended period of UA that resulted in your SCM conviction was an egregious violation of your contractual obligation to the Marine Corps. The Board also considered the negative impact your conduct likely had on the good order and discipline of your unit. Further, the Board concurred with the AO that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service and insufficient evidence to attribute your misconduct to PTSD. As the AO explained, there is insufficient evidence of clinical symptoms in service or to attribute your misconduct to a mental health condition. The Board agreed there is no evidence that you were diagnosed with a mental health condition during your military service and you provided no evidence to support your claims¹. 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 otherwise not be held accountable for your actions. The Board found that your misconduct was intentional and made you unsuitable for continued naval service. Finally, the Board observed that you did not provide any evidence, other than your statement, to substantiate your contentions.

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 Memo 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,

3/28/2025

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¹ In particular, the Board questioned your candor based on your claim of participation in ■ and determined your VA diagnosis was likely based on fraudulent or erroneous information provided by you.