



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

██████████
Docket No. 9748-24
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 9 April 2025, has carefully examined your current request. 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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). The Board also considered an advisory opinion (AO) from a qualified mental health professional, dated 18 February 2025, 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 previously applied to this Board for a discharge upgrade but were denied on 26 September 2001. The summary of your service remains substantially unchanged from that addressed in the Board's previous decision.

The Board carefully considered all potentially mitigating factors to determine whether the interest of justice warrants 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 and contentions that you incurred PTSD or a mental health condition during military service, your unauthorized absence (UA) was due to your mother requiring assistance at home, and you were coerced into accepting an OTH discharge without legal representation. You further contend that you requested a hardship discharge that was never considered by your command. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO. The mental health professional stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition or suffered from PTSD while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He submitted evidence of post-service treatment for depression, anxiety and PTSD. Neither the Petitioner's description nor evidence letters describe events that meet criteria for PTSD as per DSM-V-TR. In other words, the described trauma does not meet criteria A. Furthermore, the evidence provided lacks sufficient evidence to provide a nexus between depression, anxiety and his in-service misconduct. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion that there is insufficient evidence of a mental health condition that existed while in service. There is insufficient evidence to attribute his misconduct to a mental health condition."

In response to the AO, you submitted documentation that provided additional information regarding the circumstances of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJP, extensive period of UA, and good of the service request, outweighed the potential 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 an opportunity 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. Further, contrary to your contention that you were coerced into accepting an OTH discharge without legal representation, the record shows that you voluntarily requested to be discharged to avoid a trial by court-martial and you were represented throughout the

process by legal counsel¹. Additionally, also contrary to your contention that you went UA to assist your mother, your request for discharge states, “I went UA because of not being able to adjust to military life. This Marine also applied for a hardship discharge with my unit...” Regardless, the Board noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and possible punitive discharge.

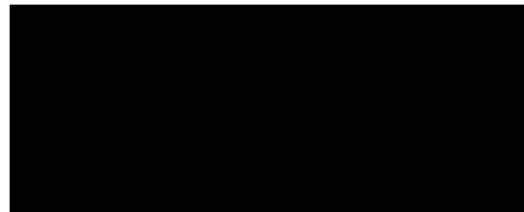
The Board also concurred with the AO that there is insufficient evidence your misconduct could be attributed to PTSD or a mental health condition. As explained in the AO, there is no evidence you were diagnosed with a mental health condition or suffered from PTSD while in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. The Board also agreed that neither of your description nor evidence letters describe events that meet criteria for PTSD as per DSM-V-TR. 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. 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,

4/18/2025



¹ Your 16 August 1985 request to be discharged in lieu of trial by court-martial specifically states, “I have discussed this request with my counsel (judge advocate) and I am completely satisfied with my counsel’s advice.” In addition, your assigned legal counsel co-signed your letter requesting your discharge.