



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

██████████
Docket No. 9793-24

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 2 May 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) (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) 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 Marine Corps and commenced a period of active duty on 28 July 1981. On 1 February 2000, you took your oath of office and commissioned as Chief Warrant Officer 2 in the U.S. Marine Corps.

On 15 November 2001, pursuant to your guilty pleas, you were convicted at a General Court-Martial (GCM) for: (a) willfully disobeying a lawful command of a superior commissioned

officer when you violated a Military Protective Order, (b) disobeying a lawful general regulation prohibiting fraternization with enlisted personnel, (c) making a false official statement to a 911 dispatch operator, (d) assaulting a female Chief Warrant Officer 3, (e) wrongfully having sexual intercourse with an enlisted female not your wife, and (f) two separate specifications of obstruction of justice when you wrongfully endeavored to impede an investigation and alter and influence certain testimony of two female witnesses. The Court sentenced you to be formally dismissed from the Marine Corps.

On 23 April 2002, the Convening Authority (CA) approved the GCM sentence. On 24 May 2002 you were placed on appellate leave to await your dismissal.

On 29 September 2005 the Navy-Marine Corps Court of Criminal Appeals affirmed the GCM findings and sentence as approved by the CA. On or about 5 May 2006, you received your dismissal letter from the Assistant Secretary of the Navy (Manpower and Reserve Affairs) informing you that you were to be dismissed from the United States Naval Service. Upon the completion of GCM appellate review in your case, you were ultimately dismissed from the Marine Corps. Your DD Form 214 issued upon your dismissal contains the notation, "Continuous Honorable Service from 19810728 to 20000131," to cover your entire enlisted service prior to your commissioning.

On 4 March 2019, this Board denied your initial discharge upgrade petition. You did not proffer any mental health-related contentions with your first petition. As new evidence, you provided your Department of Veterans Affairs (VA) disability ratings.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that: (a) you would like to have your discharge upgraded due to an undiagnosed case of PTSD, and (b) it's believed, per diagnosis from the VA and civilian physicians, that PTSD was partly/solely the cause of all of your actions underlying your discharge. 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 27 January 2025. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner contends he incurred Post Traumatic Stress Disorder (PTSD) during military service, which may have contributed to the circumstances of his separation from service.

In February 2000...[h]e denied mental health symptoms during his pre-commissioning physical.

In November 2001, he was convicted by general court martial of July 2001 misconduct, including: willful disobedience of a military protection order,

wrongfully having a personal and sexual relationship with an enlisted member, making a false official statement, assault, and trying to impede the investigation and influence testimony.

He denied mental health symptoms in his May 2002 physical and was found qualified for separation. In January 2008, he was dismissed from service.

The Petitioner has been granted service connection for PTSD, effective October 2023.

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Temporally remote to his military service, the VA granted service connection for PTSD. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, particularly give[n] insufficient information regarding his purported trauma. More weight has been given to repeated denial of mental health symptoms throughout his military service.

The Ph.D. concluded, “it is my opinion that there is post-service evidence from the VA of a diagnosis of PTSD. There is insufficient evidence to attribute his misconduct to PTSD.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board unequivocally determined that your dismissal from the Marine Corps was warranted. First and foremost, the Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed the positive aspects of your military record. The Board determined that your substantiated misconduct clearly demonstrated you had minimal potential to contribute positively to the Marine Corps as a commissioned officer responsible for the care and well-being of enlisted Marines. The Board also noted that your misconduct and total lack of judgment was not just an isolated incident and the record reflected you engaged in certain serious misconduct over an extended period of time. Thus, the Board found that your dismissal to be entirely appropriate under the totality of the circumstances.

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 purported 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 mental health-related conditions or symptoms. 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, willful, and persistent, and demonstrated you were unfit for further service. Moreover, the Board concluded that your GCM misconduct including, but not limited to, fraternization, assault, obstruction of justice was not the type of misconduct that would be excused or mitigated by mental health conditions even with liberal consideration. 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.

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 GCM of serious misconduct. The Board determined that a dismissal is 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 Corps officer.

As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your cumulative misconduct and disregard for good order and discipline clearly merited your dismissal. 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,

5/13/2025

