



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

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Docket No. 9830-24
Ref: Signature Date

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Dear ■■■■■■■■■■

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 19 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

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 27 December 1988. On 21 September 1989, you were issued an administrative remarks (Page 11) counseling concerning deficiencies in your performance and conduct. Specifically, constantly failing room inspections, your lack of attention to detail, repeated discrepancies on field day, and financial irresponsibility in writing bad checks to pay bill. The Page 11 expressly advised you that failure to take

corrective action may result in administrative separation or judicial proceedings. On 5 June 1990, you were issued a Page 11 counseling concerning an unauthorized absence (UA) and belligerent taunting behavior. The Page 11 expressly advised you that failure to take corrective action may result in administrative separation or limitation of further service. On 3 July 1990, you received non-judicial punishment (NJP) for failure to go at the time prescribed to remedial physical training muster. You participated in Operation Desert Shield/Storm from December 1990 to March 1991. During this period, you received your second NJP for false official statement.

On 18 January 1991, you were issued a Page 11 counseling concerning your substandard Proficiency/Conduct marks due to your recent NJP. During the period from April 1992 to June 1992, you were not recommended for promotion due to substandard performance, a recommendation for weight control, inability to work within your required military occupational specialty (MOS), overweight and slovenly appearance, assignment to the weight control program, and failure to achieve the minimum score on the physical fitness test (PFT). On 25 June 1992, you received your third NJP for two specifications of UA and failure to obey the order to appear in Service "A" uniform.

Subsequently, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to pattern of misconduct. You were informed of the basis for this recommendation and that the least favorable characterization of service you may receive is under Other Than Honorable (OTH) conditions. You waived your right to consult with counsel and to 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 with an OTH characterization of service. The separation authority approved the recommendation and you were so discharged on 24 August 1992.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 13 July 2005, based on their determination that your discharge was proper as issued.

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 so that you may apply for the PACT Act. You contend that you were not offered an opportunity to transfer to another unit, not offered a medical evaluation prior to your discharge, and have been diagnosed with PTSD. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

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 22 January 2025. The AO stated in pertinent part:

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, a civilian provider has diagnosed PTSD and other mental health concerns. A Department of Veterans Affairs (VA) provider has attributed the PTSD diagnosis to military service, but the VA has denied service connection. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus between his purported trauma and his misconduct, particularly given misconduct prior to Operation Desert Shield/Storm. 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 post service evidence from a civilian and a VA provider of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evident by your multiple counselings and numerous NJPs, 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. The Board noted that you were provided multiple opportunities to correct your conduct deficiencies during your service, but you continued to commit additional 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 unit.

Further, the Board concurred with the AO that, while there is post service evidence from a civilian and a VA provider of a diagnosis of PTSD that may be attributed to military service, there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As the AO explained, the available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus between your purported trauma and your misconduct; particularly given your record of misconduct prior to Operation Desert Shield/Storm. The Board agreed there is no evidence that you were diagnosed with a mental health condition in military service or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Further, the Board determined your diagnosis from a civilian and VA provider is too temporally remote from your military service. 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 and commends you for your post-discharge accomplishments, 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,

4/4/2025

