



**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. 9950-24  
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.

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 25 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 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 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.

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 U.S. Marine Corps and commenced active duty on 28 October 2002. Your pre-enlistment physical examination, on 30 August 2002, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 9 June 2003, your command issued you a "Page 11" counseling sheet (Page 11) documenting your disobedience of a lawful order. The Page 11 advised you that a failure to take corrective action any further disciplinary infractions violating the UCMJ may result in administrative separation or limitation on further service. The Page 11 also noted you getting into an argument with a Lance Corporal resulting in a fight. You did not elect to submit a Page 11 rebuttal statement.

On 24 February 2004, you received non-judicial punishment (NJP) for insubordinate conduct and the disobedience of a lawful order. You did not appeal your NJP.

On 15 December 2004, you received NJP for: (a) three (3) separate specifications of failing to obey a lawful order or regulation, and (b) two (2) separate specifications of making a false official statement. You did not appeal your NJP.

On 14 January 2005, your command documented in your service record that you were eligible but not recommended for promotion because of your recent NJP. On 10 February 2005, your command again documented that you were eligible, but not recommended for promotion due to your recent NJP.

On 19 August 2005, your command issued you a Page 11 documenting your lack of leadership and judgment in the conduct of your official duties. The Page 11 expressly advised you that a failure to take corrective action and any further disciplinary infractions violating the UCMJ may result in administrative separation or limitation on further service. You did not submit a Page 11 rebuttal statement.

On both 12 July 2006 and 22 August 2006, your command again documented in your service record that you were eligible but not recommended for promotion; this time due to your pending court-martial.

On 30 August 2006, pursuant to your guilty pleas, you were convicted at a Special Court-Martial (SPCM) of: (a) two (2) separate specifications of forgery, (b) assaulting a Lance Corporal, and (c) drunk and disorderly conduct. The Court sentenced you to confinement for sixty (60) days, a reduction in rank to Lance Corporal (E-3), and forfeitures of pay. As part of your pretrial agreement (PTA), you agreed to waive any administrative discharge board based on any act or omission reflected in the charges/specifications that were subject to the PTA.

On 24 September 2006, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to a pattern of misconduct and commission of a serious offense. Per the terms of the PTA, you waived your right to request an administrative separation board.

On 26 October 2006, the Staff Judge Advocate to the Separation Authority determined that your separation proceedings were legally and factually sufficient. Ultimately, on 8 November 2006, you were discharged from the Marine Corps for misconduct with a General (Under Honorable Conditions) (“GEN”) characterization of service and were assigned an RE-4 reentry code. On 7 December 2006, the Convening Authority approved the SPCM findings and sentence.

On 12 February 2009, the Naval Discharge Review Board (NDRB) denied your first application for discharge upgrade relief. On 23 November 2011, this Board denied your petition to upgrade your discharge and reentry code.

However, the Board noted that your service record currently includes a reissued DD Form 214, dated 5 April 2013, reflecting an “Honorable” discharge characterization. The Board observed in block 18 of the DD Form 214 that no statutory reference was cited to authorize the characterization upgrade.<sup>1</sup> Accordingly, the Board adjudicated your case under the assumption such DD Form 214 was erroneously issued and your current discharge characterization remains a GEN.<sup>2</sup>

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 for a discharge upgrade and change to your reason for separation. You contend that: (a) your discharge was inequitable because the disciplinary infractions were a result of your undiagnosed and untreated PTSD, (b) your otherwise laudable military and combat service renders your GEN discharge unjust, and (c) your post-service conduct merits an upgrade to Honorable. 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 22 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.

There is no evidence that he was diagnosed with a mental health condition in military service. Shortly after his separation from service, the VA granted service connection for PTSD.

Post-service providers have disagreed regarding the presence of additional problematic characterological traits that may have interfered with the Petitioner’s

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<sup>1</sup> The Board noted that a discharge upgrade authorized by the BCNR would include a statutory reference to 10 U.S.C. §1552 in block 18, and an NDRB upgrade would include a statutory reference to 10 U.S.C. §1553.

<sup>2</sup> The Board also noted that in your counsel’s “I. Introduction” section of their brief in support of your application, they are specifically requesting, “to upgrade his separation characterization of General (Under Honorable Conditions) to Honorable.”

military performance. It is difficult to attribute all of his misconduct to PTSD symptoms following combat exposure, as the Petitioner displayed disobedience and belligerence prior to his first combat deployment. However, it is possible that alcohol use and irritability may have worsened following the exposure to traumatic precipitants in combat.

It is difficult to attribute falsifying official documents to symptoms of PTSD. Although a civilian psychiatrist attributes falsifying official documents to “anger and irritability,” this seems problematic, as the action required planning that belies impulsivity and was not retaliatory or designed to provide retribution.

The Ph.D. concluded, “it is my clinical opinion that there is post service evidence from the VA of a diagnosis of PTSD that may be attributed to military combat. There is insufficient evidence to attribute all of his misconduct to PTSD.”

After thorough review, the Board concluded these potentially mitigating factors and contentions were insufficient to warrant relief. 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 mental health conditions and/or related symptoms and all of your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the cumulative misconduct forming the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Moreover, 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 more than outweighed the potential mitigation offered by any mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also concluded 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 did not find a material error or injustice with your GEN characterization of service and was not willing to grant a full upgrade to an Honorable discharge. 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 any positive aspects of your military record. The Board determined that characterization under Other Than Honorable conditions (OTH) or GEN is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine.

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,

5/7/2025

