



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

Docket No. 10574-24
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 5 May 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 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 Marine Corps and commenced active duty on 25 September 2001. You deployed to Kuwait and Iraq from 3 February 2003 to 18 July 2003 in support of Operations

Enduring Freedom and Iraqi Freedom, respectively. On 29 March 2004, you received non-judicial punishment (NJP) for three specifications of unauthorized absence (UA). On 7 June 2004, you received NJP for UA and failure to obey a lawful order. You immediately reenlisted and began a second period of active duty on 16 March 2005.

On 2 August 2005, you received NJP for three specifications of dereliction of duty. Additionally, you were issued an administrative remarks (Page 11) counseling concerning deficiencies in your performance and/or conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. Between 1 September 2004 and 23 March 2006, you received five Page 11 counselings, informing you that you were eligible but not recommended for Corporal (E-4) due to lack of maturity. On 1 June 2006, you were notified of your non-punitive reduction in rank as a result of the 20 May 2006 Competency Review Board's findings. On 9 June 2006, you received Page 11 counseling concerning your 7 June 2006 UA and notifying you that you were being recommended for administrative separation.

On 6 July 2009, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to pattern of misconduct. You initially waived your right to consult counsel and requested an administrative discharge board (ADB). On 25 July 2006, after consulting with counsel, you submitted an offer to waive your ADB in exchange for no less than a General (Under Honorable Conditions) characterization of service. Your request was disapproved on 11 September 2006. On 25 September 2006, after consulting with counsel, you waived your right to an ADB. The separation authority subsequently directed your discharge with an OTH characterization of service and you were so discharged on 8 November 2006.

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 change your discharge characterization of service and your contentions that your misconduct was mitigated by the PTSD you incurred due to service from February 2003 to July 2003 on the Kuwait/Iraq border. Additionally, you request reimbursement for travel expenses to your home of record and back pay from your demotion to E-2. For purposes of clemency and equity consideration, the Board considered the totality of your application that included your statement and the Department of Veterans Affairs (VA) decision letter you provided.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 6 March 2025. The AO stated in pertinent part:

Petitioner contends he incurred mental health issues (PTSD) during military service, which may have contributed to the circumstances of his separation from service.

Petitioner submitted VA compensation and pension rating noting 70% service-connection for PTSD, “to include anxiety condition, insomnia, depression, and memory loss.”

There is no evidence that the Petitioner was diagnosed with a mental health condition during his military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. He submitted evidence of post-service diagnosis of PTSD as evidenced by his VA compensation and pension rating; however, no associated documents were provided in order to review the rationale for, or etiology of the given diagnosis. His personal statement is not sufficiently detailed to provide a nexus between his misconduct and a mental health condition.

The AO concluded, “it is my clinical opinion that there is insufficient evidence of a mental health condition that existed in service. There is insufficient evidence to attribute his misconduct to a 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 evidenced by your NJP, multiple counselings, and subsequent UA in your final enlistment, outweighed these 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 multiple opportunities 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. In addition, the Board concurred with the AO and determined that there is insufficient evidence of a mental health condition that existed in service and insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, the VA evidence you submitted provides no rationale or etiology for your PTSD diagnosis. The Board agreed that your personal statement is not sufficiently detailed to provide the nexus between your misconduct and a mental health condition.

Finally, the Board declined to re-instate you to the rank of E-3 after finding that you were appropriately reduced in rank by a Competency Board. The Board noted the aforementioned performance and misconduct counselings you received and found the evidence supports the decision to reduce you in rank based on your failure to exhibit the necessary attributes of a Lance Corporal. The Board also determined that you did not provide sufficient evidence of an error or injustice in your discharge proceedings or subsequent travel arrangements that would warrant reimbursement.

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,

5/22/2025

