



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. 10748-24
Ref: Signature Date

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Dear ██████████

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 12 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 the 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 to 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) of a qualified mental health provider and your response to the AO.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 28 February 1990. As part of your enlistment processing, you disclosed a pre-service history of arrests for burglary and cruelty to animals, marijuana use, and other narcotics. Your initial entrance urinalysis was positive for marijuana; however, you were granted a waiver. On 28 June 1990, you were academically dropped from your occupational training. Between 2 October 1990 and 29 October 1990, you absented yourself without authority and received your first nonjudicial punishment (NJP) for violations of the Uniform Code of Military Justice (UCMJ) under Articles 86 and

112a, respectively, for your unauthorized absence and for a positive drug urinalysis. You deployed in support of Operation DESERT STORM, in the 0811 occupational specialty, with the ██████████ from 17 January 1991 through 13 April 1991. Although your NAVMC 118 (page 9) awards do not document the ██████████ Liberation Medal (KLM), this award was documented in your final discharge record. Following your return, you received a second NJP, on 22 May 1991, for violation of Article 92 of the UCMJ due to violating a battalion order which prohibited drinking alcoholic beverages in the enlisted barracks. You were also issued administrative counseling advising you to correct deficiencies with respect to your excessive drinking which had resulted in memory lapse, to cease drinking in the barracks, and warning you regarding your appearance of substance abuse. On 2 August 1991, you received a third NJP for two periods of unauthorized absence, in violation of Article 86 of the UCMJ, and for an Article 92 offense due to violating your restriction orders from the punishment imposed by your second NJP.

On 1 November 1991, you were tried and convicted by Special Court-Martial (SPCM) for UCMJ offenses to include Article 121, for wrongful appropriation of a cassette recorder of a value over \$100, which occurred in the commission of an Article 130 offense of housebreaking, after you unlawfully entered the quarters of a neighboring barracks room. In addition to 50 days of confinement and two months forfeitures of pay, your sentence included a Bad Conduct Discharge (BCD). During appellate review, in addition to other assignments of error, you alleged that it was error that the Staff Judge Advocate's (SJA) review and advice, and therefore the Convening Authority's consideration of clemency factors, had failed to address your award of the Combat Action Ribbon (CAR) and combat experience conferred by such award. In this regard, you argued that the SJA advice for another convicted Marine in your unit had included reference to his CAR award, which demonstrated that it was a relevant factor for purposes of clemency. However, the appellate court found insufficient evidence to substantiate your receipt of such award. Following review of your appeal, the findings and sentence of your SPCM conviction were affirmed, and your BCD was executed on 12 October 1993.

You previously applied to the Naval Discharge Review Board (NDRB) seeking an upgrade of your discharge and a correction of your narrative reason for separation. You contended that: (1) you had not deserted and, therefore, it was erroneous and prejudicial to include that basis in your narrative reason for separation, (2) that you warranted consideration of a general characterization of service based on your combat service, and (3) that your post-service conduct rendered your punitive discharge inequitable. Your request was considered on 4 May 2004 and denied with respect to your desire for an upgraded characterization. However, the NDRB found that the inclusion of the term "desertion" your narrative reason for separation was erroneous and directed correction of that error. The Board noted that your official military personnel file (OMPF) does not contain record of this correction having been issued. Although the Board does not grant correction of an error which has already been the subject of such a direction, the Board will notify the appropriate office regarding compliance with the previous correction issued by the NDRB.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie, Kurta, and Hagel Memos. These included, but were not limited to, your desire to upgrade your discharge, to correct the error in your narrative reason for separation, as addressed in the preceding paragraph, and correct you awards, to include the award of the CAR. You contend that your combat incurred post-traumatic stress disorder (PTSD) warrants liberal consideration of a punishment

which has extended for a period of more than 30 years. You state that you began to get into trouble almost immediately following your return from deployment and that you were scheduled for alcohol rehabilitation but became intoxicated and inadvertently got caught up in misconduct which resulted in your SPCM conviction and BCD. You describe mitigating circumstances of having believed that the individual from whom the cassette recorder was stolen owed money to the person you accompanied into the barracks room to steal said item. You further contend that you completed almost your entire enlistment by serving 3.5 years. Additionally, you state that, although you have been homeless on and off for 15 years, have been in and out of jail for driving under the influence, and have been in and out of rehabilitation for your alcoholism and substance abuse, you have not had any serious trouble with law enforcement otherwise. In support of your request and for the purpose of clemency and equity consideration, you submitted a personal statement, four letters from former Marines attesting to your experience of traumatic combat stressors in addition to a character letter, post-service outpatient medical records, service records, the NDRB's decision, and applicable policy memos.

Because you contend that PTSD or another mental health condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

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 mental health and substance abuse/dependence diagnoses that are temporally remote to service. Furthermore, the documents submitted lack sufficient detail to provide a nexus between latent mental health conditions and in-service misconduct.

He entered into service with a history of legal and characterological concerns that continued during his time in service. As such, it cannot be said that his misconduct was caused by PTSD or any other mental health condition. The nature and severity of his misconduct is congruent with characterological issues as opposed to a mental health condition. Additional records (e.g., active duty medical records, post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his separation) 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 occurred in service. There is insufficient evidence to attribute his misconduct to a mental health condition.

In response to the AO, you provided additional evidence in support of your application. After reviewing your rebuttal evidence, the AO remained unchanged.

After thorough review, the Board concluded the potentially mitigating factors you submitted for consideration were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and SPCM, outweighed the 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 BCD. 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, the Board considered your misconduct included a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members.

Additionally, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to a mental health condition. The Board also observed that offenses such as theft and housebreaking, the misconduct which resulted in your punitive discharge, are not normally attributable to PTSD symptoms and behaviors. 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. 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 serious misconduct more than outweighed the potential mitigation offered by any mental health conditions.

Finally, to the extent that you assert having served approximately 3.5 years on active duty, the Board noted that you had served 20 months prior to your SPCM conviction and, after your release from confinement, were placed into an appellate leave status pending the review and affirmation of your SPCM proceedings.

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.

With respect to your contended entitlement to the CAR, the Board noted that you have not yet exhausted administrative remedies with respect to seeking such correction through Headquarters Marine Corps Military Awards Branch (MMA).

You are entitled to have the Board reconsider its decision upon the 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 is attached 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,

6/2/2025

