



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

Docket No. 10813-24
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.

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 28 April 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 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.

You twice previously applied to this Board for an upgrade to your characterization of service. In your first application, you contended that your discharge unjust because the punishment was too harsh, you did not harm anyone, and you were just a kid. The Board denied your request on 30 September 2020. In your second application, you contended that your discharge unjust because you were on course to receive an Honorable discharge, “didn’t have any significant issues” prior to, and during, your deployment to [REDACTED], you started having severe psychological and alcohol issues upon return from [REDACTED], you now realize it was undiagnosed PTSD, you enlisted and were not drafted, and you served your country honorably until after you

returned from ■. The Board denied your request on 3 June 2024. The summary of your service remains substantially unchanged from that addressed in the Board's previous decisions.

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 you were suffering from undiagnosed medical condition prior to entry in the Marine Corps that was exacerbated by service and you should not have been allowed to join any branch of service considering your pre-service misconduct and rejection for enlistment by the Army. For purposes of clemency and equity consideration, the Board considered the letter from your Veteran's Services Advocate, previous Board documentation, and the letter from a provider with a master's in social work (MSW). Additionally, the Board reviewed the 28 February 2025 Letter you sent to the Secretary of Defense, including all attachments.

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 17 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 the following items in support of his claim:

- Letter from social worker dated October 2024

There is no evidence that the Petitioner suffered from a mental health condition or that he exhibited any symptoms of a mental health condition while in military service. He submitted one letter from a social worker who noted belief that Petitioner's in-service misconduct was worsened by pre-service conduct disorder. Conduct Disorder is a childhood disorder that often evolves into Antisocial Personality Disorder as an adult. Thus, it cannot be said that the Petitioner's misconduct was caused by 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 seven non-judicial punishments and separation in lieu of trial by court martial, 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. The Board also noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and possible punitive discharge.

Additionally, 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, your medical evidence was insufficient to support a nexus between a mental health condition and your misconduct. 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, with respect to your contention that the Marine Corps should not have accepted you for enlistment considering your pre-service misconduct and rejection by the Army, the record indicates that, during your enlistment interview on 28 May 1968, you denied having ever been rejected for enlistment or induction in any branch of the Armed Forces. Additionally, you were given a waiver of police record after an extensive interview where you discussed your juvenile misconduct, your brother's service in the Navy, and your motivation to be a Marine. Therefore, the Board was not persuaded by your argument that you did not meet the minimum qualification for enlistment.

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, _____

5/16/2025

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Executive Director

Signed by: █