



Docket No. 11570-24  
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, considered your application on 7 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 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 afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You previously applied to this Board for an upgrade to your characterization of service and were denied relief on 1 April 2016, 11 April 2019, and 29 August 2022. 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 upgrade your discharge character of service and contentions that you were assaulted and beaten resulting in a traumatic brain injury (TBI), you have trouble with stressful situations, and if the incident had not occurred you

would have had a great career in the Marine Corps. 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 19 March 2025. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated on two separate occasions during his enlistment. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed by the mental health clinicians. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service, since they are not typically amenable to treatment within the operational requirements of Naval Service.

Petitioner also received a diagnosis of concussion shortly before his separation from service. Temporally remote to his military service, civilian providers have diagnosed him with TBI attributed to military service. However, post-service providers have attributed his TBI to a purported assault in boot camp. Unfortunately, there are no service medical records to support the Petitioner's contention of this event. More weight has been placed on in-service medical records supporting a possible TBI following his car accident late in service over post-service recall of TBI earlier in service.

Temporally remote to his military service, civilian providers have also diagnosed the Petitioner with PTSD and other mental health concerns that are considered to have not been present prior to his purported boot camp assault. It is possible that in-service mental health symptoms identified as personality disorder may have been reconceptualized as PTSD and other mental health symptoms with the passage of time and increased understanding. However, it is difficult to attribute his misconduct to undiagnosed symptoms of PTSD or another mental health condition. His repeated in-service mental health evaluations and chronic misconduct throughout his military service are more consistent with characterological traits rather than an onset of behavior difficulties following a traumatic precipitant.

The AO concluded, "There is post-service evidence from civilian providers of diagnoses of PTSD, TBI, and other mental health concerns that may be attributed to military service. There is insufficient evidence that the Petitioner's misconduct may be attributed to PTSD, TBI, 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, three non-judicial punishments, and two special court martial convictions,

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 Other Than Honorable 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 civilian providers of diagnoses of PTSD, TBI, and other mental health concerns that may be attributed to military service, there is insufficient evidence that your misconduct may be attributed to PTSD, TBI, or another mental health condition. As the AO explained, post-service providers have attributed your TBI to a purported assault in boot camp. Unfortunately, there are no in-service medical records to support your contention of the assault. Furthermore, more weight has been placed on your in-service medical records supporting a possible TBI following your car accident late in your service from post-service recall of TBI. Your repeated in-service mental health evaluations and chronic misconduct throughout your military service are more consistent with characterological traits rather than an onset of behavior difficulties following a traumatic precipitant. Additionally, the Board determined your diagnosis from civilian providers 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.

Finally, the Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active-duty trait average calculated from your available performance evaluations during your enlistment was approximately 3.8 in conduct. Marine Corps regulations in place at the time of your discharge recommended a minimum trait average of 4.0 in conduct (proper military behavior) for a fully Honorable characterization of service. The Board concluded that your misconduct was not minor in nature and that your conduct marks during your active-duty career were a direct result of your serious misconduct and further justified your OTH characterization.

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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

5/19/2025

