



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

Docket No. 107-25
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 1 July 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 (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 enlisted in the Marine Corps and began a period of active duty on 3 December 1991. You subsequently completed this period of active-duty service with an Honorable characterization of service and transferred to the Marine Corps Reserve on 2 January 1996. You subsequently reenlisted and commenced another period of active duty on 31 August 2000. After a period of Honorable service, you again reenlisted on 5 February 2004.

From February 2003 to June 2003 and February 2005 to September 2005, you participated in Operation Iraqi Freedom. On 18 February 2009, you were found guilty by a general court-martial (GCM) of violation of a lawful general order, in violation of Article 92, Uniform Code of

Military Justice (UCMJ), aggravated sexual assault of a child who has attained the age of 12 years but not attained the age of 16, in violation of Article 120, UCMJ, sodomy with a child under the age of 16 years at least 12, in violation of Article 125, UCMJ, and indecent acts and indecent liberties, in violation of Article 134, UCMJ. As punishment, you were sentenced to confinement, forfeiture of pay and all allowances, reduction in rank, and a Dishonorable Discharge (DD). Ultimately, upon the completion of appellate review in your case, you were so discharged from the Marine Corps on 19 February 2010.

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 to improve your employment prospects, eligibility for veterans' benefits, and overall sense of closure with your military service. The Board considered your contentions that: (1) your current status does not accurately reflect the level of service and sacrifice you and your family made to the country, (2) your civilian mental health provider has diagnosed you with PTSD and mental illness, and (3) you desire support and a fair chance for opportunities to improve your education and employment outcome. For purposes of clemency and equity consideration, the Board considered the totality of your application; which included your DD Form 149 and the evidence you provided in support of it.

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 12 May 2025. 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 one letter indicating treatment for PTSD that is temporally remote to service. Aggravated assault of a child is not typical behavior caused by PTSD. His personal statement is not sufficiently detailed to provide a nexus between any mental health condition and his in-service misconduct. 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 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 your misconduct, as evidenced by your GCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard of military authority and regulations. Therefore, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge

accurately reflects your conduct during your period of service, which was terminated by your DD.

Further, the Board concurred with the AO that there is insufficient evidence of a mental health condition that existed in service or to attribute your misconduct to a mental health condition. As the AO explained, your personal statement is not sufficiently detailed to provide a nexus between any mental health condition and your in-service misconduct. The Board agreed there is no evidence that you were diagnosed with a mental health condition during your military service or that you exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. Furthermore, the Board determined your diagnosis from a civilian provider is too temporally remote from your military service. Therefore, the Board determined that the record clearly reflected that your active-duty misconduct was willful and that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise 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, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities.

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 Memo 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,

7/14/2025

