



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

██████████  
Docket No. 560-25  
Ref: Signature Date

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████████████████████

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 limitations 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 8 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 (PTSD)/mental health condition (MHC) (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 an advisory opinion (AO) provided by a qualified mental health professional on 13 May 2025. Although you were provided an opportunity to comment on 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 entered active duty with the Marine Corps on 15 July 2002. You received a moral waiver prior to enlistment for failing to disclose civil convictions. On 28 July 2004, you received non-judicial punishment (NJP) for underage drinking. On 27 August 2004, you received NJP for two specifications of underage drinking. On 4 March 2005, you were formerly counseled for damaging government property by punching a hole in the wall. On 13 October 2005, you received NJP for 11 specifications of absence from appointed place of duty. On 20 December

2005, civil authorities convicted you of underage drinking and driving under the influence (DUI). Consequently, you were notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct. You elected to consult with legal counsel and requested an administrative discharge board (ADB). In the meantime, you received an additional NJP for disrespect toward a superior commissioned officer. The ADB found that you committed misconduct due to a pattern of misconduct and recommended you be discharged with a General (Under Honorable Conditions) (GEN) characterization of service. The separation authority concurred with the ADB and you were so discharged on 20 June 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 upgrade your discharge and contentions that you were suffering from mental health concerns (PTSD) during military service, you showed signs of Traumatic Brain Injury (TBI) while serving, the Department of Veterans Affairs (VA) diagnosed you with PTSD, other disorders, and cancer. You further contend that your command never returned your belongings and you were told your discharge would automatically be upgraded. For purposes of clemency and equity consideration, the Board considered the totality of your application; which included your DD Form 149 and VA documentation you provided.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO. The mental health professional 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 VA compensation and pension rating noting diagnosis of PTSD; however, no corroborating evidence or documentation was submitted to evaluate the etiology of/rationale for the diagnosis. His personal statement is not sufficiently detailed to provide a nexus between his misconduct and any 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 existed in service. There is insufficient evidence to attribute his misconduct to a mental health condition."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJPs and civil conviction, outweighed the potential 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 and chose to continue to commit misconduct; which led to your GEN 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 concurred with AO that there is insufficient evidence to attribute your misconduct to a mental health condition (PTSD). As pointed out in the

AO, there is no evidence 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. While you provided VA documentation regarding service connected disability ratings, the Board agreed with the AO that these documents do not provide the etiology or rationale for your diagnosis. 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, the Board also noted you were issued a GEN characterization of service despite the fact your extensive record of misconduct would normally qualify for an Other Than Honorable characterization of service. Therefore, the Board determined you already received a large measure of clemency from the Marine Corps.

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 mitigated 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,

7/23/2025

