



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. 875-25
Ref: Signature Date

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Dear ■■■■■■■■■■

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 17 June 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) (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 31 May 2000. On 29 December 2000, you were issued an administrative remarks (Page 11) counseling your violation of the Battalion Liberty Policy. The Page 11 counseling provided you with recommendations for corrective action, and expressly advised you that failure to take corrective action may result in additional Page 11 entries, non-judicial punishment (NJP), and ultimately administrative separation or limitation of further service.

On 8 November 2001, you received NJP for two specifications of absence from your appointed place of duty, missing movement through design, and failure to obey a lawful written order by wearing earrings in both of your ears. On 26 November 2001, you were found guilty by a

summary court-martial (SCM) of breaking restriction. On 5 April 2002, you again were found guilty by a SCM of unauthorized absence and failure to obey a lawful order from a superior noncommissioned officer.

Consequently, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to pattern of misconduct. You were informed that the least favorable characterization of service you may receive is Under Other Than Honorable (OTH) conditions. You elected your right to consult with counsel and waived your right to present your case to an administrative discharge board. Prior to the commanding officer's (CO) recommendation, on 15 April 2002, you were issued a Page 11 counseling concerning three periods of unauthorized absence and breaking restriction. The CO forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Marine Corps. As part of the CO's recommendation, he stated in pertinent part:

It is my opinion that [Petitioner] be discharged with an Other Than Honorable characterization of service. [Petitioner] has consistently and unequivocally demonstrated that he is incapable of maintaining the discipline necessary to continue service in the Marine Corps. I believe that retaining [Petitioner] would prove to be a significant burden on the resources of this Battalion, and further contact with other Marines and Sailors would undoubtedly prove detrimental. [Petitioner] has been afforded every opportunity to correct his attitude and performance, and in failing to do so has lost the respect and confidence of his immediate command and this unit. I can see no reason to retain [Petitioner] as doing so would not be in the best interest of this Battalion or the USMC.

The separation authority approved the recommendation and you were so discharged on 7 June 2002¹.

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 contention that an injustice was made regarding your character without you being given the opportunity to justify your actions. 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 1 May 2025. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition

¹ The Board noted your DD Form 214 annotated that you were in an "absentee status" at the time of your discharge.

that would have warranted a referral for evaluation. After discharge from military service, he received treatment for mental health concerns related to personal stressors. He also presented some Department of Veterans affairs (VA) records indicating a diagnosis of PTSD attributed to combat exposure. However, there is insufficient evidence to attribute his misconduct to his purported traumatic precipitant, particularly given misconduct prior to the onset of the war in ■ which appears to have continued afterwards.

The AO concluded, “There is some post-service evidence from VA mental health providers of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD 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 NJP and SCM 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 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.

Further, the Board concurred with the AO that while there is some post-service evidence from the VA mental health providers of PTSD that may be attributed to military service, there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As the AO explained, there is no evidence that you were diagnosed with a mental health condition in military service or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Additionally, the Board determined the medical evidence you provided is temporally remote to your military service. Finally, the Board agreed that your medical records indicate your mental health diagnosis was based, in part, on your purported combat experiences in ■. Based on your sea service record and lack of any record of combat deployment, the Board questioned your reliability as a historian and your candor in this matter. Ultimately, 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.

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,

7/2/2025

