



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. 1779-25
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 August 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 the 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 to 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) of a qualified mental health provider. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 17 November 1999. In May 2000, you received your first non-judicial punishment (NJP) following a 20-day period of unauthorized absence (UA) in violation of Article 86 of the Uniform Code of Military Justice (UCMJ). On 30 March 2001, you received a second NJP for the violating Article 128 of the UCMJ after assaulting a corpsman by striking him in the face with a closed fist. On 12 April 2002, you were tried before General Court-Martial (GCM) and convicted of two specifications of

violating Article 128 of the UCMJ. Specifically, you unlawfully struck a sergeant by pushing his body with your arms and hands and you also committed assault upon a lance corporal by repeatedly striking his head with your knees, repeatedly striking his back with your elbows, repeatedly striking his groin with your shod foot, repeatedly biting his back and finger with your teeth, choking him with your arms with a suffocating force to the point of unconsciousness, and striking his face with your fist, with a means or force likely to produce death or grievous bodily harm. As a result, you were sentenced to 21 months confinement, with total forfeitures of pay, and a Bad Conduct Discharge (BCD).

Based upon a pre-trial agreement, all confinement in excess of 18 months was suspended for a period of 12 months. However, while confined, you assaulted two prisoners; one by striking him with a closed fist and a sock containing a combination lock, and the other by assaulting him with a closed fist and by kicking him. You were convicted by Summary Court-Martial (SCM), in July 2002, for these additional two specifications under Article 128 and you were sentenced to an additional 29 days of confinement. Your record does not indicate whether the suspended portion of your GCM sentence was vacated as a result of these additional offenses. Following appellate review, which affirmed the findings and sentence of your GCM, your BCD was ordered executed and you were so discharged on 9 September 2005.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie, Kurta, and Hagel Memos. These included, but were not limited to, your desire to upgrade your discharge and contention that you had a significant problem with alcohol abuse during your service which contributed to your misconduct. You elaborate that you stayed out of trouble a majority of time when you were training for your job or performing military duties, particularly when you were deployed and busy, but that you drank during your free time and made poor decisions. You also noted that you completed an alcohol abuse rehabilitation course prior to your deployment. You claim that you were diagnosed with post-traumatic stress disorder (PTSD) while confined to the military brig and that you were also diagnosed with dissociative disorder and placed on medication. Post-discharge, you have served a 10-year prison sentence, then took anger management, and began Alcoholics Anonymous. You then spent considerable time fighting charges following an arrest after an altercation with your sister and returned to jail for an additional five-year sentence following allegations by your ex-wife. In support of your application, you submitted documentation of your learning hours attained during your current incarceration but no supporting medical documentation. For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted of your DD Form 149 and the evidence you provided in support of your application.

Because you contend that PTSD or another mental health condition affected the circumstances of the misconduct which resulted in your discharge, the Board also considered the AO. 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 suffered from any symptoms incurred by a mental health condition. He did not submit any medical evidence in support of his claim. 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) may 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 that your misconduct, as evidenced by your NJPs, GCM, and SCM, 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 BCD. 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 observed that, over the course of your service, you were convicted of a total of five specifications for violation of Article 128 of the UCMJ. Further, at least two of these assaults were extremely serious in nature, to include: choking another service member to the apparent point of unconsciousness, with means or force likely to produce death or grievous bodily harm. and creating an improvised weapon while incarcerated by placing a combination lock inside of a sock in order to commit an assault upon another prisoner. With respect to the latter offense, you had been incarcerated for several months by that point, and the Board struggled to comprehend how your contended alcohol abuse issues might have contributed to your misconduct.

Additionally, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to a mental health condition. As explained in the AO, you provided no medical evidence in support of your claim and your personal statement is not sufficiently detailed to provide a nexus between any mental health condition and your in-service 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.

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 the 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 is attached 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,

8/27/2025

