



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

[REDACTED]
Docket No. 2384-25
Ref: Signature Date

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

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 21 November 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider and your AO rebuttal submission.

You originally enlisted in the U.S. Marine Corps and began a period of active duty service on 5 December 1985. Your enlistment physical examination, on 7 February 1985, and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms. Your last reenlistment commenced on or about 18 May 2001.

On 2 August 2002, you received non-judicial punishment (NJP) for: (a) failing to obey a lawful general order (Joint Ethics Regulation) by using a government vehicle for personal errands, and (b) cruelty and maltreatment of a subordinate. You did not appeal your NJP.

On 23 April 2003, your chain of command initiated your detachment for cause (DFC) from recruiting duty due to personal misconduct related, in part, to your standoff with the ██████████ Police Department SWAT Team. The immediate superior in the chain of command (ISIC) also recommended your DFC. In their recommendation dated 18 June 2003, the ISIC stated in pertinent part:

[Petitioner's] pattern of misconduct coupled with his lack of judgment, decision-making, and ability to set the example have caused me to lose the trust and confidence in his abilities to effectively remain on recruiting duty. It is in the best interest of the Marine Corps and Recruiting Station Albuquerque that [Petitioner] be relieved of all recruiting duties pending the outcome of special court martial.

The next two higher levels in your chain of command both recommended your DFC on 10 July 2003 and 19 August 2003, respectively.

On 4 September 2003, you were convicted at a Special Court-Martial (SPCM) of: (a) willful disobedience of a superior commissioned officer, (b) breach of the peace, and (c) wrongful possession of a firearm in a Federal facility. The Court sentenced you to a reduction in rank to Staff Sergeant (E-6) and a reprimand. On 11 September 2003, the Commandant of the Marine Corps approved your DFC from recruiting duty.

On 15 October 2003, civilian authorities in ██████████ arrested you on two (2) felony charges of: (a) aggravated stalking, and (b) aggravated assault with a deadly weapon. ██████████ County authorities held you in civilian confinement following your arrest. The Board noted that each day you were held in civilian custody you were in an unauthorized absence (UA) status day-for-day.¹

On or about 7 November 2003, your command notified you of administrative separation procedures by reason of misconduct due to the commission of a serious offense. The factual basis underlying your administrative separation was your violation of several UCMJ Articles adjudicated at NJP and at a SPCM, as well as your charged civilian offenses. On 7 November 2003, you elected to present your case at a hearing before an administrative separation board (Adsep Board).

Prior to the Adsep Board, on 12 November 2003, your commanding officer (CO) initially recommended to the Separation Authority (SA) that you should be separated with an under Other Than Honorable conditions (OTH) discharge characterization. In the recommendation, the CO stated in pertinent part:

...it is my opinion that an under other than honorable conditions discharge is warranted...[Petitioner] has demonstrated his lack of maturity and judgment. His character and behavior have been detrimental to the reputation of the Marine Corps. Allowing [Petitioner] to remain in the Marine Corps will cause grave damage to our credibility, and send a message to our Marines that we do not wish to convey.

¹ The Board noted that your DD Form 214 indicates "Time Lost" from the date of your civilian arrest (15 October 2003) until 29 March 2004; a period of approximately 167 days.

On 15 October 2003, [Petitioner] was again arrested by the ██████████ Police Department and is currently incarcerated. His charges include Assault with a Deadly Weapon, Aggravated Stalking and Domestic Violence. [Petitioner's] preliminary hearing was on 27 October 2003. He has been afforded every possible chance to rehabilitate his career and his self-destructive behavior continues in an increasing and escalating manner. As a result of his actions, I strongly recommend that [Petitioner] be separated.

On 16 January 2004, an Adsep Board convened in your case. Following the presentation of evidence and any witness testimony, the Adsep Board members recommended that you be separated with an OTH discharge characterization.

On 6 February 2004, the Staff Judge Advocate (SJA) to the SA determined your separation proceedings were legally and factually sufficient. On 13 February 2004, the ISIC recommended to the SA that you should receive an OTH discharge characterization. In the recommendation, the ISIC stated in pertinent part:

On 4 September 2003, (then) [Petitioner] was found guilty at a Special Court-Martial on the charges disobeying a lawful command from a superior commissioned officer, breach of the peace, and wrongfully possessing a firearm in a federal facility. At this proceeding, he was sentenced to be reprimanded and reduced to the pay grade of Staff Sergeant. [Petitioner] was then subsequently arrested on 15 October 2003 on charges of aggravated stalking and aggravated assault with a deadly weapon. He is currently incarcerated on a \$100,000.00 cash only bond.

[Petitioner] was unfortunately a well-known Marine to local and national media and police at the time of his arrest. His actions were not a mere error in judgment, but represent serious infractions of the Uniform Code of Military Justice. [Petitioner] was a Gunnery Sergeant at the time of his special court-martial, and as a Staff Noncommissioned Officer, he was entrusted with the responsibility of recruiting potential applicants for the Marine Corps as well as representing the Corps in the local communities. To retain this Marine and allow him to leave the service with an honorable or general discharge is an affront to good order and discipline and erodes the very foundation of our Corps. His past actions warrant and deserve a characterization of service of under other than honorable conditions.

On 1 April 2004, the Commandant of the Marine Corps approved and directed your separation with an OTH, and ordered that you be administratively reduced in rank to pay grade E-3 effective upon your discharge. Ultimately, on 22 April 2004, you were separated for misconduct from the Marine Corps in paygrade E-3 (Lance Corporal) with an OTH discharge characterization and assigned an RE-4 reentry code.

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 for a retroactive retirement at the paygrade of E-6 with back pay and allowances or, alternatively, that you be granted a discharge

upgrade and changes to your reason for separation, separation code, and reentry code. You contend that: (a) had you faced the same situation today, you would have received the mental health care you needed, and the stigma surrounding mental health at the time of your discharge led to an unjust outcome, one that would be handled very differently today, (b) you served honorably for over eighteen (18) years, but were discharged due to mental illness caused by your service in the Marine Corps, and (c) there are also significant procedural errors in your discharge that further underscore the injustice, including forged signatures. 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.

A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records and issued an AO on 1 July 2025. As part of the Board's review, the Board 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 submitted evidence of noted depressive symptoms with no formal diagnosis that is temporally remote to service. His personal statement is not sufficiently detailed to provide a nexus between his misconduct and any mental health condition.

The Ph.D. 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 (PTSD)."

Following a review of your AO rebuttal submission, the Ph.D. did not change or otherwise modify their original AO.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence of any nexus between any potential mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms, and instead was the result of characterological symptoms that were not due to a mental health condition. Additionally, 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 cumulative misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also 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.

The Board denied your request to be granted a retroactive retirement in paygrade E-6 (Staff Sergeant). First, the Board determined that there was no convincing and/or credible evidence in the record regarding any command misconduct, improper motives, or abuses of discretion in the investigating, handling and processing of your misconduct and your administrative separation. Thus, the Board determined that your administrative separation for your misconduct was legally and factually sufficient, and that you did not submit convincing evidence to overcome the presumption of regularity. Second, the Board was not willing to provide you with constructive service credit and back pay and allowances for time not served on active duty just in order to make you retirement eligible. Lastly, the Board noted that your administrative reduction in rank to E-3 upon your discharge was appropriate and within the discretion of the SA when an OTH discharge characterization was warranted.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine.

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 in 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,

12/2/2025

