



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

██████████
Docket No. 2406-25
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 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 8 September 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, 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 the advisory opinion (AO) furnished by a qualified mental health professional on 30 June 2025. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 13 July 1978. After a period of continuous Honorable service that included a previous reenlistment, you immediately

reenlisted and commenced a third period of active duty on 31 July 1984. On 14 July 1985, you received a non-judicial punishment (NJP) for disobeying a lawful order from a noncommissioned officer. On 4 October 1985, your commanding officer issued a statement concerning the discrepancies with your performance evaluation and stated you expressed satisfaction with the actions taken in the matter. On 16 December 1985, you began a period of UA which lasted two days. On 3 January 1986, you received NJP for a period of UA from appointed place of duty.

Between 23 January 1986 and 18 February 1986, you began three periods of UA totaling 25 days and resulting in your apprehension by military authorities. On 25 March 1986, you pleaded guilty and were convicted by special court martial (SPCM) for two of the aforementioned UA periods. You were sentenced to reduction in rank, a period of confinement at hard labor, and forfeiture of pay. On 27 March 1986, your commanding officer recommended that you were administratively separated from the Marine Corps by reason of convenience of the government. On 12 April 1985, you began another period of UA which lasted 178 days. Upon your return, you requested an Other Than Honorable (OTH) discharge characterization of service in lieu of trial by court martial. After your administrative separation proceedings were determined to be sufficient in law and fact, the separation authority approved your request. On 13 November 1986, you were so discharged.

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 discharge upgrade and contentions that: (a) you were targeted after writing a letter to higher authorities about someone falsely signing your fitness report, (b) you were suffering from severe depression while in service, and (c) you became a victim of harassment and your request to be assigned to a different unit was denied. . For purposes of clemency and equity consideration, the Board considered the totality of your application; which consisted of your DD Form 149, a Department of Veterans Affairs (VA) provider's letter, and a statement in support of a VA claim.

As part of the Board's review, the Board considered the AO. 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 that would have warranted a referral for evaluation. Temporally remote to his military service, he has received many years of treatment for mental health concerns from the VA. While it is possible that his UA may be considered a behavioral indicator of avoidance due to mental health concerns, it is difficult to attribute his misconduct solely to mental health concerns, given in-service statements that his difficulties began after his first court martial. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, “There is some post-service evidence from the VA of mental health concerns that may be attributed to military service. There is insufficient evidence to attribute his misconduct solely to mental health concerns.”

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, SPCM, lengthy periods of UA, and request to be discharged in lieu of trial by court martial, 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 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. The Board also noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and possible punitive discharge.

Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. As explained in the AO, there is no evidence that you were diagnosed with a mental health condition while in military service and, while it is possible that your final UA may be considered a behavioral indicator of avoidance due to mental health concerns, it is difficult to attribute your misconduct solely to mental health concerns given your in-service statements that your difficulties began after your first court-martial. 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 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,

9/24/2025

