



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

701 S. COURTHOUSE RD

ARLINGTON, VA 22204

██████████  
Docket No. 2656-25

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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 26 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, and applicable statutes, regulations, and policies, to include to the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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 and licensed clinical psychologist which was previously provided to you. You were afforded an opportunity to submit a rebuttal but did not.

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 previously applied to this Board contending that, although you were implicated in shoplifting by another Marine, you were innocent of the offense. You explained that you had chosen to “take a plea” – which the Board understood to mean that you had requested separation

in lieu of trial. In this regard, the Board noted that a request for separation in lieu of trial may only be accepted and approved if you acknowledge that there is sufficient evidence to convict you of the charged offense; however, in your request, you claimed that you had been advised by your detailed defense counsel that your previous NJPs would present a hurdle to proving your innocence at trial. In retrospect, you believe that you would have been acquitted at trial. You also submitted evidence of post-service character and accomplishments for consideration of a potential grant on the basis of clemency. Your request was considered on 2 March 2020 and denied. The summary of your service remains substantially unchanged from that addressed in the Board's previous decision.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the additional guidance of the Wilkie, Kurta, and Hagel Memos. These included, but were not limited to, your desire to upgrade your discharge and change your narrative reason for separation. You contend that you incurred post-traumatic stress disorder (PTSD) due to pre-service trauma which was aggravated during your military service by your combat deployment in support of Operation Desert Storm and you outlined the clemency factors which you believe should be considered with respect to a potential upgrade of your discharge characterization. In support of your request, you resubmitted the previously considered character letters, evidence of a 10-year service award from the ██████████ ██████████ for your work with at-risk juveniles, a personal statement, the Department of Veterans Affairs (VA) Disability Benefits Questionnaire (DBQ) pertaining to your PTSD diagnosis, and a mental health medical opinion regarding the aggravation of your pre-service trauma by your exposure to in-service combat. 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 post-traumatic stress disorder (PTSD) or another mental health condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

Petitioner explained that he incurred PTSD from discovering his mother's dead body and that it was exacerbated by combat exposure during ██████████ ██████████. He described symptoms of PTSD experienced following the incident, and difficulty with school attendance. He provided evidence of her death in October 1987. He submitted evidence of character and post-service accomplishment. He claimed that his first UA was unavoidable due to travel delays returning from authorized liberty. He contended his other misconduct was minor and due to misunderstandings of procedure. He stated that he was falsely accused of the charges of theft and received faulty advice to accept separation from service rather than protest his innocence.

Petitioner submitted a March 2017 Department of Veterans Affairs (VA) Disability Benefits Questionnaire listing a diagnosis of PTSD. The evaluation described symptoms of PTSD attributed to military combat exposure. No pre-service PTSD symptoms from the death of his mother were reported in the questionnaire.

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. Temporally remote to his military service, he has received a diagnosis of PTSD from a VA provider that is attributed to his service. Unfortunately, there are discrepancies in his record that raise doubt regarding his candor. His personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct. 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 post-service evidence from a VA provider of a diagnosis 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your non-judicial punishments and request for separation 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.

Additionally, the Board concurred with the clinical opinion of the AO not only due to concerns raised regarding your candor but also due to the lack of a nexus between your contended experience of PTSD during your military service and your misconduct. In this regard, the Board noted that larceny is not normally attributable to PTSD symptoms and behaviors, nor would an offense which you deny committing be so attributable. The Board applied liberal consideration to your claim that you suffered from a mental health condition, and to the effect that this condition may have had upon the conduct for which you were discharged in accordance with the Hagel and Kurta Memos. Applying such liberal consideration, the Board found sufficient evidence of a diagnosis of mental health condition that may be attributed to military service. However, even applying liberal consideration, the Board found insufficient evidence to conclude that the misconduct for which you were discharged was excused or mitigated by your mental health condition. In this regard, the Board simply had insufficient information available upon which to make such a conclusion. 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 and acknowledged your post-discharge good character, 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,

11/19/2025

