



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

[REDACTED]
Docket No. 2857-25
Ref: Signature Date

[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.

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

You originally enlisted in the U.S. Marine Corps Reserve on 28 March 1990. Your enlistment physical examination, on 30 March 1989, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. Your last reenlistment occurred on or about 28 April 2002.

On or about 9 October 2006, you were placed in pretrial confinement awaiting your upcoming General Court-Martial (GCM) for multiple offenses. On 17 July 2007, pursuant to your guilty pleas, you were convicted at a GCM of: (a) three (3) separate specifications of larceny, (b) two (2) separate specifications of the wrongful possession of a controlled substance, (c) making a false official statement, (d) the wrongful possession of an unregistered assault weapon, and (e) three (3) separate specifications of failing to obey a lawful general regulation, all related to the failure to properly safeguard and store classified documents. The Board noted that your third larceny specifications encompassed no less than thirty-nine (39) separate items, to include no less than eleven (11) semi-automatic and/or automatic weapons, and a M57 60mm Mortar System. The Court sentenced you to a reduction in rank to the lowest enlisted paygrade (E-1), confinement for seven (7) years, total forfeitures of pay and allowances, and to be discharged from the Marine Corps with a Dishonorable Discharge (DD). On 26 November 2007, the Convening Authority (CA) approved the GCM sentence as adjudged, except suspended any confinement in excess of twenty-six (26) months for a period of twelve (12) months from the date of trial.

On 18 March 2008, the Naval Clemency and Parole Board denied you any clemency. On 12 June 2008, the U.S. Navy-Marine Corps Court of Criminal Appeals (NMCCA) concluded that the GCM findings and the sentence were correct in law and fact and at no error materially prejudicial to your substantial rights was committed. The NMCCA also affirmed the GCM findings and sentence as approved by the CA. On 6 November 2008, the U.S. Court of Appeals for the Armed Forces denied your petition for a grant of review. Upon the completion of GCM appellate review in your case, on or about 13 August 2009, you were discharged from the Marine Corps with a DD 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 Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that: (a) you should be granted clemency, as your separation was based on misconduct exacerbated by PTSD, which was not considered in your discharge, (b) you should be granted clemency because your misconduct was non-violent, the punishment was too harsh, and your post-conviction conduct has been above reproach, and (c) this Board should grant clemency to ensure fundamental fairness because the Marine Corps committed a grievous error by prosecuting you after you had completed your service obligation and were no longer subject to the UCMJ. For purposes of clemency and equity consideration, the Board considered the totality of 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 16 July 2025. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

During military service, the Petitioner was evaluated and received treatment for PTSD and other mental health concerns. These were attributed in part to combat exposure and in part to the traumatic experience of being present during 9/11.

There are some inconsistencies in the record regarding the Petitioner's 9/11 experience that raise doubt regarding his candor or the reliability of his recall over time. Initial descriptions of his experience noted that he experienced guilt over the loss of coworkers. Later narratives stated that he participated in recovery efforts following the incident.

Petitioner was repeatedly evaluated, and his mental health concerns were considered as part of his legal processing, including regarding clemency requests during his confinement in the brig. He was repeatedly noted to have intact judgment and there was never a consideration that he did not understand the meaning of his actions or lack responsibility for his behavior.

The Ph.D. concluded, "There is in-service evidence of diagnoses of PTSD and other mental health concerns that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to PTSD or another mental health condition."

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 PTSD, mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such PTSD and/or mental health conditions mitigated the serious misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to PTSD or mental health-related conditions or symptoms. Moreover, the Board concluded that your offenses involving larceny, unlawfully possessing an unregistered assault weapon, and failing to safeguard classified information were not the types of misconduct that would be excused or mitigated by any mental health conditions even with liberal consideration. 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 noted that any AO findings, conclusions, and/or opinions are not binding on the Board, and/or do not require the Board to vote in accordance with the AO whether it is favorable,

mixed, or unfavorable. The Board further noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations are not binding on the Department of the Navy and have no bearing on previous active duty service discharge characterizations.

Moreover, the Uniform Code of Military Justice (UCMJ) states that during the appellate review process, the appellate court (in this case, the NMCCA) may affirm only such findings of guilty and the sentence or such part or amount of the sentence as it finds correct in law and fact and determines, on the basis of the entire record, should be approved. In other words, the appellate court (NMCCA) has a duty to conduct a legal and factual sufficiency review of the case. If any errors or improprieties had occurred at any stage in your case, the appellate court (NMCCA) surely would have concluded as such and ordered the appropriate relief. However, no substantive, evidentiary, procedural, or jurisdictional defects were identified in your case. In the end, the Board concluded that any such suggestion or argument that you were not subject to the UCMJ at either the time of your GCM, or when you committed your offenses, was baseless and entirely without merit.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this was not a case warranting any clemency as you were properly convicted at a GCM of serious misconduct. The Board determined that characterization with a DD or Bad Conduct Discharge (BCD) appropriate when the basis for discharge is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. Moreover, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities.

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 egregious 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,

12/3/2025

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