



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

701 S. COURTHOUSE RD

ARLINGTON, VA 22204

[REDACTED] Docket No. 3113-25

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 5 December 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. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the U.S. Marine Corps and began a period of active duty service on 9 September 1998. Your enlistment physical examination, on 27 February 1998, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 5 January 2000, you received non-judicial punishment (NJP) for failing to obey a lawful order/regulation. You did not appeal your NJP.

On 28 March 2000, you received NJP for an unauthorized absence (UA) and for dereliction of duty. You did not appeal your NJP. On the same day, your command issued you a "Page 11" warning (Page 11) documenting your NJP and your failure to conform to Marine standards. The Page 11 advised you that a failure to take corrective action may result in administrative separation or limitation on further service.

On 21 September 2000, you received NJP for two separate UA specifications and for failing to obey a lawful written order. You did not appeal your NJP. On 4 October 2000, your command issued you a Page 11 documenting your pattern of misconduct. The Page 11 advised you that a failure to take corrective action may result in administrative separation or limitation on further service.

On 6 November 2000, you received NJP for three (3) separate UA specifications. You did not appeal your NJP.

On 28 December 2000, you were convicted in [REDACTED] of criminal domestic violence. The Court sentenced you to pay a fine. In accordance with the [REDACTED] [REDACTED] you were no longer authorized to be issued weapons, ammunition, or weapons custody cards.

On 7 February 2001, you received NJP for the willful disobedience of a superior commissioned officer when you violated a Military Protection Order (MPO). You did not appeal your NJP.

On 13 March 2001, you received NJP for: (a) UA, and (b) the willful disobedience of a superior commissioned officer. You did not appeal your NJP.

On 5 April 2001, you commenced a period of UA that terminated on 8 April 2001. Your command placed you in pretrial confinement awaiting court-martial upon your return to military control.

On 27 June 2001, pursuant to your guilty pleas, you were convicted at a Special Court-Martial (SPCM) for: (a) your 3-day UA, (b) insubordinate conduct, and (c) an assault when you unlawfully grabbed your spouse by the arm, picked her up, and threw her across a bed into a night stand. The Court sentenced you to confinement for 120 days, and a discharge from the Marine Corps with a Bad Conduct Discharge (BCD). On 7 February 2002, the Convening Authority (CA) approved the SPCM sentence as adjudged. On 21 January 2003, the U.S. Navy-Marine Corps Court of Criminal Appeals affirmed the SPCM findings and sentence as approved by the CA. Ultimately, upon the completion of SPCM appellate review in your case, on 16 May 2003, you were discharged from the Marine Corps with a BCD.

On 18 September 2008, the Naval Discharge Review Board (NDRB) denied your discharge upgrade application. You did not proffer any mental health-related contentions with your NDRB application.

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 suffered from PTSD related to family problems while on active duty, (b) during my active duty service you discovered that your wife was having an affair with two of your immediate supervisors in your chain of command, and (c) your wife continued her abusive behaviors until you were discharged. 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 15 July 2025. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

There is evidence that the Petitioner was diagnosed with an Adjustment Disorder and "Antisocial Features" during service. His Adjustment Disorder was based on the Petitioner's anecdote of ongoing family/relationship stressors that were considered temporary and situational; thus, his reported depressive symptoms were not deemed the result of a primary mental health disorder at the time of assessment. The Petitioner continued to violate orders given him by his Lieutenant Colonel, which exceeds that which would be expected to be caused by a mental health condition alone. He did not submit any post-service medical evidence in support of his claim.

The Ph.D. concluded, "it is my clinical opinion that there is insufficient evidence of a mental health condition or PTSD 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. 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 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 any mental health-related conditions or symptoms. Additionally, the Board concluded that your domestic violence-related offenses were not the type 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 noted that your service record was marred by six (6) separate NJPs, two (2) Page 11 entries, a civilian conviction for domestic violence, and one (1) SPCM. 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 observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 3.4 in conduct. Marine Corps regulations in place at the time of your discharge recommended a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your cumulative misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your serious misconduct and a failure to conform to basic military standards of good order and discipline, all of which further justified your BCD characterization.

The Board 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 SPCM of serious misconduct. The Board determined that characterization with a 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.

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,

12/17/2025

[REDACTED]