



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD
ARLINGTON, VA 22204

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Docket No. 4472-25
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 your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your case on its merits. A three-member panel of the Board, sitting in executive session, considered your application on 20 February 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 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 you did not do so.

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 your personal appearance was not necessary and considered your case based on evidence of record.

The following is the relevant factual background of your case based upon review of your naval record and/or the matters provided with your application:

1. You enlisted in the Marine Corps and began a period of active duty on 25 July 2005.

2. You deployed in support of Operation Iraqi Freedom from March 2007 through October 2007.

3. Beginning November 2008, you were routinely issued periodic administrative counseling advising you that you were not recommended for promotion to the next higher grade due to pending legal action. These advisories continued through April 2009. Although your end of active-duty service (EAS) obligation passed on 11 July 2009, you remained beyond your EAS for trial by court-martial, as reflected by your confinement from 17 July 2009 through 6 September 2009. Following your release from confinement, you were discharged under honorable (GEN) conditions, on 11 September 2009, for completion of required active service.

After careful review, the Board reached the following conclusions and denied your application for relief.

The Board initially concluded you were appropriately assigned a GEN characterization of service based on the legal action that resulted in your confinement. While the Board carefully considered your contention for mitigation, the Board noted you admitting to committing the misconduct that formed the basis for legal action. Therefore, the Board determined the presumption of regularity applies to your assigned GEN characterization of service and no error exists with your record.

Because you contend, in part, 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:

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, the VA has granted service connection for PTSD. Unfortunately, available records are not sufficiently detailed to establish a nexus with the circumstances of his separation from service. 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, "it is my considered clinical opinion that there is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service in part. There is insufficient evidence that the circumstances of his separation from service may be attributed to PTSD."

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. This conclusion is supported by the AO and your post-service PTSD rating from the Department of Veterans Affairs. 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.

In addition to applying liberal consideration to your claimed mental health condition and its potential effect upon your conduct in accordance with the Hagel and Kurta Memos, the Board also considered the totality of the circumstances to determine whether equitable relief is warranted in the interests of justice in accordance with the Wilkie Memo. In this regard, the Board considered, amongst other factors, your contentions, the totality of your service, your relative youth and immaturity at the time of your misconduct, your mental health issues, and the passage of time since your discharge.

The Board found that the mitigating factors were not nearly sufficient to justify any equitable relief. Specifically, the Board found that the severity of your misconduct far outweighed all of the mitigating factors combined. Foremost, the Board noted that your official military personnel file does not contain a record of trial or record of conviction documenting the forum of your trial proceedings, the nature of the offense(s), or your sentence. However, clearly, due to your confinement extending beyond 30 days, you were tried and convicted at least by a Special Court-Martial or General Court-Martial. The Board thus concluded you were fortunate to have surpassed your obligated period of active duty since your court-martial conviction, more likely than not, would have subsequently resulted in administrative separation processing for commission of a serious offense and an Other Than Honorable discharge. Further, the Board was not convinced by your argument that your otherwise positive service record should mitigate your misconduct. The Board noted that, although one's service is generally characterized at the time of discharge based on performance and conduct throughout the entire enlistment, the conduct or performance of duty reflected by only a single incident of misconduct may provide the underlying basis for discharge characterization. There is no precedent within this Board's review, for minimizing the "one-time" isolated incident. As with each case before the Board, the seriousness of a single act must be judged on its own merit, it can neither be excused nor extenuated solely on its isolation. In your case, misconduct that resulted in your court-martial conviction was considered sufficiently serious to outweigh the positive aspects of your service. Therefore, based on the circumstances that allowed you to separate with a GEN characterization of service, the Board found no injustice exists with your record. While the Board acknowledged your deployment in support of Iraqi Freedom and the resulting mental health struggles you experienced, ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct evidenced by your court-martial conviction.

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,

3/18/2026

