



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

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Docket No. 4589-25  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 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 13 February 2026. 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 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo) and 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 the advisory opinion (AO) furnished by a qualified mental health provider and your AO rebuttal.

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 U.S. Marine Corps and began a period of active duty service on 12 September 1989. Your enlistment physical examination, on 27 July 1989, and self-reported

medical history both noted no psychiatric or neurologic issues, symptoms, history, or counseling. As part of your enlistment application you disclosed pre-service marijuana and cocaine use.

2. On 31 May 1990, your command issued you a “Page 11” counseling (Page 11) where you acknowledged that you were eligible, but not recommended for promotion to Lance Corporal (E-3) because of a lack of responsibility, maturity, and leadership. You elected not to submit a Page 11 rebuttal statement. On 31 May 1990, your command issued you another Page 11 documenting your lack of initiative in your day duties, and no sense of responsibility towards your duties.

3. On 29 June 1990, you commenced a period of unauthorized absence (UA) that terminated on 9 July 1990. On 12 July 1990, you received non-judicial punishment (NJP) for your 10-day UA. You did not appeal your NJP.

4. On 1 October 1990, your command issued you a Page 11 whereby you acknowledged that you were eligible but not recommended for promotion because of your recent NJP. You elected not to submit a Page 11 rebuttal statement.

5. On 30 December 1990, your command issued you a Page 11 where you understood that you were eligible, but not recommended for promotion to Lance Corporal (E-3) due to a lack of performance of duties when seniors aren't present, and also due to your recent NJP. You elected not to submit a Page 11 rebuttal statement.

6. On 13 August 1991, you commenced another UA. On 16 September 1991, your command declared you to be a deserter and dropped you from the rolls. Your UA terminated with your arrest by Oregon State Police, on 11 October 1991, and return to military authorities on 14 October 1991.

7. On 14 November 1991, you submitted a voluntary written request for an administrative discharge for the good of the service to avoid trial by court-martial for your 59-day UA. Prior to submitting this voluntary discharge request, you conferred with a qualified military lawyer, at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. You acknowledged that if your request was approved that an under other than honorable conditions (OTH) discharge characterization was authorized. As a result of this course of action, you were spared the stigma of a court-martial conviction for your offenses, as well as the potential sentence of confinement and the negative ramifications of likely receiving a punitive discharge.

8. On 20 November 1991, the Staff Judge Advocate to the Separation Authority (SA) determined that your discharge proceedings were legally and factually sufficient. On 27 November 1991, the SA approved your discharge request for the good of the service in lieu of trial by court-martial and directed an OTH discharge characterization. Your separation physical examination, on 3 December 1991, and self-reported medical history both noted no psychiatric

or neurologic issues, symptoms, history, or counseling. Ultimately, on 13 December 1991, you were separated from the Marine Corps in lieu of a trial by court-martial with an OTH discharge characterization and were assigned an RE-4 reentry code.

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

The Board initially concluded you were appropriately processed for administrative separation based on your record of misconduct. While the Board carefully considered your contention for mitigation, the Board noted you did not deny committing the misconduct. Thus, the Board determined that there was absolutely no credible and convincing evidence in the record regarding any purported command misconduct, improper motives, or abuses of discretion or judgment in the investigating, handling, and processing of your voluntary discharge request and subsequent administrative separation. Therefore, the Board determined the presumption of regularity applies to the finding that you committed the misconduct that formed the basis of your administrative separation and no error exists with your OTH characterization of service.

However, because you raised the issue of mental health, the Board requested an AO. A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records and issued an AO on 13 August 2025. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

From August to October 1991, the Petitioner was UA. His command recommended administrative separation in lieu of trial by court martial for the UA because the Petitioner was experiencing "problems dealing with life challenges (marital discord, etc). Probably not a good bet for continued service." The Petitioner submitted a statement that his wife requested separation upon his return from deployment, and he left UA to "remedy the situation and began to work and make amends with my wife." There is no evidence that he was diagnosed with a mental health condition in military service, although the Petitioner noted his marital stressors in service. Temporally remote to his military service, a VA provider has diagnosed him with PTSD attributed to military service. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given UA prior to his deployment that appears to have continued after his return.

The Ph.D. 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. There is insufficient evidence that his misconduct may be attributed to PTSD."

In response to the AO, you provided additional evidence in support of your application. Following a review of your AO rebuttal submission, the Ph.D. did not change or otherwise modify the AO.

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 Memo. Applying such liberal consideration, the Board found insufficient evidence of a diagnosis of mental health condition that may be attributed to military service. This conclusion is supported by the AO and the fact your medical evidence is temporally remote to your service. Additionally, 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 and recognized the same concerns raised in the AO. 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.

In addition to applying liberal consideration to your claimed mental health condition and its potential effect upon your conduct in accordance with the Hagel Memo, 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, the non-violent nature of your misconduct, your relative youth and immaturity at the time of your misconduct, the negative effect your discharge has had on your life, your rehabilitation efforts, your post-service record of accomplishments, your service to your community, your mental health issues, your advanced age, the character references you provided for review, your allegations regarding your command, 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. In particular, the Board 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. Further, 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 believed that it would be unjust to characterize your less than honorable service in the same manner as the service of the thousands of service members who, unlike you, honorably completed their enlistments without engaging in misconduct warranting the early curtailment of their service. Therefore, the Board did not find an upgrade of your discharge to General (Under Honorable Conditions) or Honorable to be warranted in the interests of justice. While the Board commends you for your post-service rehabilitation efforts and accomplishments, 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,

2/22/2026

