



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

701 S. COURTHOUSE RD
ARLINGTON, VA 22204

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Docket No. 4924-25
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 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 24 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 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, 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)/mental health condition (MHC) (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), furnished by a qualified mental health professional, and your response to the AO.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 19 January 1999. Prior to your enlistment, you admitted to preservice use of a controlled substance-marijuana. On 13 July 1999, you were counseled concerning willful disobedience of a lawful regulation by failing to report to your appointed place of duty and driving under the influence of alcoholic beverages. You were advised that failure to take corrective action could result in administrative separation.

Subsequently, a preliminary inquiry was initiated by your commanding officer surrounding the circumstances of your enlistment due to fraudulent entry allegations.

On 29 September 1999, you received nonjudicial punishment (NJP) for a period of unauthorized absence (UA), wrongful use of provoking words and gestures, and drunk and disorderly conduct. You were counseled concerning your previous UCMJ violations and advised that failure to take corrective action could result in administrative separation. On 30 October 1999, you began a second period of UA which lasted 43 days and resulted in your conviction by summary court martial (SCM) on 3 March 2000. You were sentenced to reduction in rank, a period of confinement and forfeiture of pay.

On 8 March 2000, you were notified of the initiation of administrative separation proceedings by reason of fraudulent entry and misconduct due to pattern of misconduct; at which point, you decided to waive your procedural rights. Your commanding officer (CO) recommended you be discharged with an Other Than Honorable (OTH) discharge characterization of service. After your administrative separation proceedings were determined to be sufficient in law and fact, the separation authority approved the CO's recommendation by reason of misconduct due to pattern of misconduct and you were so discharged on 28 April 2000.

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 were diagnosed with Bipolar Disorder and had been suffering from the disorder since you were on active duty, (b) you had trouble with your emotions and your mental health state; which caused you not to be in full control of your actions, and (c) you are seeking an upgrade with the possibility of getting some benefits since you are about to be homeless. 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.

As part of the Board's review, the Board 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, although there is behavioral evidence of a possible alcohol use disorder that existed prior to military service and continued during military service. The Petitioner has submitted evidence of a mental health condition diagnosed post-service. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given pre-service behavior that appears to have continued in 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 insufficient evidence of a diagnosis of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to a mental health condition."

In response to the AO, you provided additional evidence in support of your application. After reviewing your rebuttal evidence, the AO remained unchanged.

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 NJP and SCM, 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.

Additionally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. 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 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 not sufficiently detailed to establish clinical symptoms in 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. 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.

Finally, 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 and 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 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 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,

1/5/2026

