



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

701 S. COURTHOUSE RD

ARLINGTON, VA 22204

██████████
Docket No. 5108-25

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 Board waived the statute of limitation 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 19 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 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 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. Although you were afforded an opportunity to submit a rebuttal, you chose not to 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.

You enlisted in the Marine Corps after completing a period of honorable service in the Army and began a period of active duty on 26 February 2006. Your Army service included a two-year deployment to Iraq. On or about either 13 or 15 March 2006, you absented yourself without authority from recruit training until 25 March 2006. On 27 March 2006, you were subject to nonjudicial punishment (NJP) for violating Article 86 of the Uniform Code of Military Justice (UCMJ) due to your unauthorized absence (UA) period. You again absented yourself from

30 March 2006 through 22 May 2006. Although you initially returned from a deserter status, you again absented yourself on 13 June 2006 and remained absent until apprehended on 31 January 2007. On 7 February 2007, you received a second NJP for your period of UA, again in violation of Article 86, UCMJ. Subsequently, you were notified of processing for administrative separation by reason of misconduct due to commission of a serious offense. You expressed a desire to be discharged and elected to waive your right to a hearing before an administrative separation board. The recommendation for your separation under Other Than Honorable (OTH) conditions was approved and you were so discharged on 23 February 2007.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie, Kurta, and Hagel Memos. These included, but were not limited to, your desire to upgrade your discharge and change your separation code and reentry code to something more favorable. You contend that you were exposed to combat-related trauma and concussive blasts from exposure to mortar round explosions during your deployment to Iraq with the Army, you were diagnosed by the Department of Veterans Affairs (VA) with traumatic brain injury (TBI) and other disabilities from that period of service, the VA has rated with a 100 percent disability rating, you began experiencing headaches during Marine Corps recruit training, you now believe these were symptoms of your TBI, and you informed your drill instructor but he did not believe your claims regarding your condition. You state that the reason you left recruit training without authorization was due to your medical condition. In support of your application, you submitted a personal statement, a character letter, and VA records related to your disability decision and treatment progress notes. 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.

Because you contend that TBI or a mental health condition affected the circumstances of the misconduct which resulted in your discharge, the Board also considered the AO. The AO stated in pertinent part:

There is no evidence that the Petitioner received a diagnosis of TBI or a mental health condition during military service. Temporally remote to his military service, he has received service connection for TBI attributed to a prior service experience. It is difficult to attribute his chronic and repetitive UA during his Marine service to sequelae of TBI given his denial of medical problems at enlistment and the brief period of Marine service completed prior to misconduct. 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 TBI that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to TBI."

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 NJPs, 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. During the approximately one year of your Marine Corps enlistment, you were absent for more than 80 percent of that time.

The Board also concurred with the AO that there is insufficient evidence that your misconduct may be attributed to TBI. The Board applied liberal consideration to your claim that you suffered from TBI, 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 TBI condition that may be attributed to military service. This conclusion is supported by the AO. 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 TBI 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 your TBI condition, the Board unequivocally concluded that the severity of your serious misconduct more than outweighed the potential mitigation offered by the TBI condition.

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 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,

1/13/2026

