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

[redacted]
Docket No. 6002-25
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 30 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 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). Additionally, the Board also considered the advisory opinion (AO) furnished by a qualified mental health provider and your AO rebuttal.

On 6 April 2016, this Board denied your initial discharge upgrade petition. You did not proffer any mental health-related contentions with your first BCNR petition.

On 15 January 2021, this Board unanimously denied your discharge upgrade reconsideration petition. The AO drafted for your second petition stated in pertinent part:

> Petitioner's in-service records do not contain direct evidence he suffered a psychological trauma as a pre-cursor to PTSD, nor do they contain direct evidence of psychological or behavioral changes, which may have indicated PTSD. Additionally, Petitioner provided other rationale for his misconduct. For example, he acknowledged, in his personal statement, he left without permission (for 251 days) to avoid hard labor, with the intention of coming back and asking for a General Under Honorable Conditions Discharge. Although he has presented evidence of a post-discharge mental health diagnosis, the post-service diagnosis is based on evaluations and reported symptoms from a patient-presented history a full 40 years after his discharge from service.
>
> …it is my considered medical opinion there is insufficient evidence Petitioner exhibited behaviors associated with PTSD during his military service, which would mitigate his in-service misconduct.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that: (a) you have been diagnosed with PTSD, not previously considered, (b) you were never informed that the CG retained you after your Adsep Board, (c) your attorney lied to you and said the CG wanted to send you to Leavenworth for a year and to avoid that fate, you should go UA and return in a year, (d) the failure to properly diagnose your service-connected PTSD contributed to your continued misconduct and prolonged UA, (e) your service-connected PTSD mitigates and outweighs your discharge, (f) your prolonged advice was based on the advice of your military counsel, and (g) it has been more than fifty (50) years since you joined the Marines and you have spent a lifetime trying to correct your records so that you may rightly feel proud of your service that has personally cost you so much over the last half century. 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 a new AO on 23 September 2025. 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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Temporally remote to his military service, he has received diagnoses of PTSD and other mental health concerns attributed in part to traumatic precipitants from military service. Unfortunately, available records do not provide a nexus with his misconduct. While it is possible that some of his disobedience, insubordination, and poor attitude could be considered behavioral indicators of irritability associated with undiagnosed symptoms of PTSD. However, it is difficult to attribute his chronic and repetitive UA to avoidance associated with

PTSD, particularly when he claims that his most extensive UA was due to poor legal counsel.

The Ph.D. concluded, "it is my considered clinical opinion that there is post-service evidence from VA-affiliated providers of diagnoses of PTSD and other mental health concerns that may be attributed to military service. There is insufficient evidence that all of his misconduct may be attributed to PTSD or another mental health condition."

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 their original AO.

After thorough review, the Board concluded these potentially mitigating factors and contentions 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 serious misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct forming the basis of your discharge. The Board observed that your dates for participation in Vietnam evacuation operations began in April 1975 and lasted seventeen (17) days. Thus, the Board determined that the overwhelming majority of your pattern of misconduct occurred in the United States prior to such date and would have not been mitigated by any purported PTSD triggered by such operations. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. 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 lengthy pattern of serious misconduct far outweighed the potential mitigation offered by any mental health conditions.

The Board determined the record reflected that your pattern of misconduct was intentional and willful and demonstrated you were unfit for further service. The Board noted that your service record was marred by eight (8) non-judicial punishments, two (2) separate special court-martial convictions, and a 251-day period of unauthorized absence (UA). The Board further concluded 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 determined that it was entirely within your command's discretion to retain you on active duty and disapprove your General (Under Honorable Conditions) discharge in December 1976. The Board further determined that there was 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. The Board unequivocally determined that your administrative separation was legally and factually sufficient, and in compliance with all Department of the Navy directives and policy at the time of your discharge.

Regarding your contention that your JAG attorney purportedly advised you to go UA, there is no convincing evidence in the record, and you provided none, that you experienced ineffective assistance of counsel. First and foremost, the Board found it implausible for an attorney to advise you to commit a crime in any situation; especially when, following your retention on active duty in December 1976, you were not facing any further disciplinary action. The Board noted that it was not until after you committed your 251-day UA that you were subject to further disciplinary action. Accordingly, the Board found your contention that your counsel advised you to go UA to be unpersuasive. Moreover, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to rebut the presumption, to include evidence submitted by the Petitioner, the Board presumed that you were properly processed for separation and discharged from the Marine Corps for your long-term UA. Finally, the Board observed that the voluntary discharge request you signed and was witnessed by your military counsel was a standard Marine Corps form, and Board noted that in the form request was specific language stating that you were entirely satisfied with his/her legal advice.

The Board also noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations are not binding on the Department of the Navy and have no bearing on previous active duty service discharge characterizations.

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 by the Naval Discharge Review Board during your enlistment was approximately 3.20 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 conduct marks during your active duty career were a direct result of your pattern of serious misconduct which further justified your Other Than Honorable (OTH) discharge characterization.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. The Board determined that illegal drug possession and introduction is contrary to Marine Corps core values and policy, renders such service members unfit for duty, and poses an unnecessary risk to the safety of their fellow Marines. The Board noted that marijuana possession and use in any form is still against current Department of Defense regulations and not permitted for recreational use while serving in the military. The simple fact also remains is that you left the Marine Corps while you were still contractually obligated to serve and you went into a UA status for 251 days without any legal justification or excuse.

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 cumulative 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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

1/9/2026

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