



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

██████████
Docket No. 6239-25
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 13 March 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 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 your response to the AO.

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 you began a period of active duty on 25 March 2002. As part of your enlistment processing, you received a waiver for pre-service drug use,
2. You deployed to ██████████ from 15 February 2002 through 22 March 2003, during which time you earned award of the Combat Action Ribbon while joined to a unit which also received a Presidential Unit Citation.

3. On 25 November 2003, you were subject to nonjudicial punishment (NJP) for violations of the Uniform Code of Military Justice (UCMJ), to include Article 86, for being absent without authority for more than 72 hours, and, Article 111, for physically controlling a passenger vehicle while impaired by alcohol with a blood alcohol content of .17. Following your NJP, you were issued administrative counseling advising you that further misconduct could result in adverse administrative or judicial action.

4. On 12 February 2004, you were convicted by Summary Court-Martial (SCM) for another unauthorized absence, in addition to a violation of Article 92, UCMJ, due to failure to obey a lawful general order or regulation. A substance abuse counseling entry also documented your failure to complete your alcohol rehabilitation program.

5. In May and June 2004, you received two additional NJPs for UCMJ offenses to include Article 92, for failure to obey a lawful order by drinking and driving, Article 112a, for wrongful use of the controlled substance marijuana, Article 108, for willfully breaking a government window without proper authority, and, Article 134, for breaking restriction.

6. On 4 February 2005, you were convicted by General Court-Martial (GCM) for UCMJ violations that included:

a. Article 81, for conspiracy to commit larceny of a television, valued greater than \$500, property of the U.S. government;

b. Article 92, for failure to obey lawful order by wrongfully failing to turn in ammunition;

c. Two specifications under Article 107, one specification for making a false official statement top Naval Criminal Investigative Service (NCIS), with intent to deceive, that the television was not stolen and you were merely reclaiming it, and a second specification for making a false official statement, with intent to deceive, that you did not start a fire in the barracks;

d. Three specifications under Article 112a, for wrongful use of marijuana;

e. Article 121, for the theft of a television set valued greater than \$500;

f. Article 126, for willfully and maliciously setting on fire an inhabited dwelling (specifically, a barracks room);

g. Article 129, for unlawfully breaking into and entering a dwelling (again, a barracks room), in the nighttime, with intent to commit larceny; and

h. Article 134, by being incapacitated for duty due to wrongful previous overindulgence in intoxicating liquor or drugs.

7. You were sentenced to three years of confinement with total forfeitures of pay and a Dishonorable Discharge (DD). Based upon your pre-trial agreement, the Convening Authority suspended confinement in excess of 24 months.

8. On 26 January 2006, the Navy-Marine Corps Court of Criminal Appeals (NMCCA) affirmed the findings and sentence of your GCM and, subsequently, the Court of Appeals for the Armed Forces (CAAF) denied your petition for further review.

9. On 1 September 2006, your DD was ordered executed. However, when you were discharged on 30 November 2006, you were issued a Certificate of Discharge or Release from Active Duty (DD Form 214) which recorded your punitive discharge as a “Bad Conduct Discharge” rather than the DD, which was adjudged and approved.

In your application to this Board, you express a desire for your discharge character of service be upgraded and contend that:

1. You were pending a medical discharge due to post-traumatic stress disorder (PTSD), depression, and excessive drinking.

2. You feel that your mental health issues were treated as an attempt to “cop out” of duty and believe that you were made an example of for trying to “quit” the service.

3. This resulted in public ostracism, to which you responded poorly, thus worsening your situation.

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

The Board initially concluded you were appropriately discharged with a punitive discharge based on your GCM conviction, sentence, and appellate review. The Board noted you did not deny committing the misconduct that formed the basis of your GCM conviction and DD. Therefore, the Board determined the presumption of regularity applies to your punitive discharge and no error exists with your record.

However, because you contend that PTSD or another mental health condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

In May 2004, the Petitioner was hospitalized for five days for psychiatric concerns. Discharge diagnoses were listed as Alcohol Abuse in remission; Depressive Disorder Not Otherwise Specified (NOS); PTSD, mild; Attention Deficit Hyperactivity Disorder (ADHD); and Borderline Personality Disorder. He “was found to be medically unfit for full duty noting mild to moderate Post Traumatic Stress Disorder. Med board was unwarranted...due to what appears to be legal charges against him.”

In January 2006, the Petitioner received a mental health evaluation while in the brig. He “reported excessive anxiety, nightmares, and severe insomnia since returning from Iraq in 2003” and was diagnosed with chronic PTSD. He received follow-up medication treatment through August 2006.

In a June 2006 follow-up appointment, the psychiatrist noted, “[W]e should not ignore the fact that he had a rather significant experience in Iraq contributing to

Post Traumatic Stress and, perhaps, fostering a lot of irrational goings on after his return. He was diagnosed with PTSD, chronic, mild to moderate in severity; Alcohol Abuse versus Dependence, in remission in a secured environment; Depressive Disorder NOS; and Borderline Personality Disorder.

There is evidence that he was diagnosed with mental health concerns during his military service, including combat-related PTSD, alcohol use disorder, and personality disorder. There is insufficient evidence to attribute his misconduct solely to combat-related mental health concerns, given his pre-service substance use and behavior that is not consistent with a trauma response. While it is plausible that his alcohol and substance use behavior may have been exacerbated by combat exposure. However, it is difficult to attribute theft and property damage to symptoms of PTSD.

The AO concluded, “Based on a review of all available evidence, it is my considered clinical opinion that there is in-service evidence of diagnoses of PTSD and other mental health concerns that may be attributed to military service. There is insufficient evidence to attribute all of his misconduct to PTSD or another mental health condition.”

In response to the AO, you provided a statement explaining that you are not arguing that your PTSD condition or the Marine Corps were responsible for your conduct. Rather, that had the Marine Corps treated your mental health issues, the result of your case may have differed.

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 in-service medical evidence. However, even applying liberal consideration, the Board found insufficient evidence to conclude that all 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 took into consideration your statement that your mental health condition was not responsible for your conduct. 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 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 desire for an upgrade to your characterization of service, your contentions, the totality of your service, your need for veterans’ benefits, 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 candor and remorse, your mental health issues, the harshness of your punishment, the evidence you provided in support of your application, 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 determined that a significant portion of the misconduct for which you were convicted by GCM was extraordinarily serious, particularly breaking and entering a barracks room to commit larceny and, even more so, by intentionally starting a fire in the barracks, then lying to NCIS when questioned regarding your crimes. Further, 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 DD. 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. Therefore, even taking into consideration all the mitigation factors in your case, the Board found that your misconduct while on active duty outweighed the mitigation evidence offered. While the Board acknowledged the personal difficulties you have endured, ultimately, the Board concluded an upgrade of your discharge characterization of service is not warranted in the interests of justice.

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,

4/3/2026

