



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE RD
ARLINGTON, VA 2220

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Docket No. 6408-25
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 4 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 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 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)/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 on 18 November 2025 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.

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 with a waiver and began a period of active duty on 6 January 2006. During your enlistment processing, you acknowledged preservice experimental marijuana use.

2. On 5 July 2006, you began a period of unauthorized absence (UA) which lasted 38 days. On 7 June 2006, you received nonjudicial punishment (NJP) for a period of UA and disobeying a direct order. Consequently, you were counseled concerning your previous violations resulting in NJP and advised that failure to take corrective action could result in administrative separation.

3. On 9 November 2006, you received a second NJP for failure to obey an order by drinking underage and driving under the influence.

4. On 12 March 2007, you were convicted by summary court martial (SCM) for speeding, having an open alcoholic container in your vehicle, false decal, operating a vehicle without a license, registration, and insurance, driving on base with suspended privileges, driving under the influence, reckless driving, and fleeing the scene of an accident. You were sentenced to a period of confinement, a period of restrictions, and forfeiture of pay.

5. Between 25 May 2007 and 10 November 2007, you deployed in support of █
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6. On 2 May 2008, you received a third NJP for failure to obey a lawful order by operating a vehicle while under suspended driving privileges and operating a vehicle while under the influence of alcohol.

7. Between 28 June 2008 and 24 July 2008, you deployed in support of Operation Iraqi Freedom.

8. On 30 November 2008, you began a period of UA which lasted 379 days and resulted in your apprehension by civil authorities.

9. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), it appears that you submitted a voluntary written request for an Other Than Honorable (OTH) discharge for separation in lieu of trial (SILT) by court-martial. In the absence of evidence to contrary, it is presumed that prior to submitting this voluntary discharge request, you would have conferred with a qualified military lawyer, been advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you would have acknowledged that your characterization of service upon discharge would be an OTH.

10. Unfortunately, documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214) reveals that you were separated from the Marine Corps, on 3 March 2010, with an Other Than Honorable (OTH) characterization of service, narrative reason for separation of "In Lieu of Trial by Court Martial," separation code of "KFS1," and reentry code of "RE-4." Your separation code is consistent with a SILT discharge.

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. 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 were properly separated for misconduct with an OTH characterization of service.

Because you raised the issue of mental health, the Board requested an AO. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

There is no evidence of a mental health condition or PTSD during his military service. He submitted evidence of a post-service diagnosis of PTSD. He received two NJP's and one Summary Court Martial conviction prior to his deployments; thus, it cannot be said that his predeployment misconduct was due to PTSD sustained in combat. It is possible that PTSD could have contributed to his misconduct following deployment (operating a vehicle with a suspended license and driving while under the influence of alcohol). However, given his extensive misconduct that occurred pre-deployment, it is more likely that he was exhibiting the same behaviors and making the same choices post-deployment as he was prior. 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 sufficient evidence of a post-service diagnosis of PTSD that may be attributable to his combat deployments. There is insufficient evidence to attribute his misconduct to any mental health condition or PTSD based on his substantive pre-deployment history of misconduct."

In response to the AO, you provided a rebuttal statement in support of your discharge review. After reviewing your rebuttal statement, the AO remained unchanged.

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 post-service medical evidence. 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 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 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, the totality of your service, your need for veterans' benefits, 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 remorse, your service to your community, the character references you provided for review, your mental health condition, 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, 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 noted the incidents of driving under the influence and considered the potential deadly harm you could have caused to others. 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. In their opinion, it would also create an unwarranted and inaccurate assessment of your period of service that could potentially undermine the integrity of the Navy's personnel system. 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.

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,

2/18/2026

