



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

██████████
Docket No. 6409-25
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 6 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. 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 a personal appearance was not necessary and considered your case based on 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 and began a period of active duty on 16 October 2000. You completed a successful combat deployment from February through May of 2003, for which you received award of the Combat Action Ribbon (CAR).

2. On 14 November 2003, you were placed into pre-trial confinement pending charges for multiple counts of theft of military property. On 14 June 2004, you were tried by General Court Martial (GCM) and pleaded guilty consistent with a pre-trial agreement. You were convicted of violations of the Uniform Code of Military Justice (UCMJ), to include: Article 80, for conspiracy to commit larceny, Article 108, for selling a ██████████ Article 121, specifications 1 through 3, for theft of an ██████████ a mine kit, and a trigger assembly, an additional Article 121 charge for theft of an additional five MK 152 kits, and Article 134, for wrongfully impeding an investigation. On 15 June 2004, you were sentenced to five years of confinement with total forfeiture of pay, reduction to the paygrade of E-1, and a Bad Conduct discharge (BCD).

3. While your GCM proceedings were pending appellate review, you were granted early parole in December 2005. In conjunction with your release from confinement, you also received a separation physical which addressed your in-service diagnosis of post-traumatic stress disorder (PTSD).

4. The Navy Marine Corps Court of Criminal Appeals (NMCCA) reviewed your GCM proceedings on 18 October 2006 and, after setting aside and dismissing the finding of guilt on Article 121, specification 2, corrected the findings of your conviction. However, NMCCA found no prejudicial error and concluded that the adjudged sentence continued to be appropriate for the remainder of your offenses.

5. You petitioned the United States Court of Appeals for the Armed Forces (CAAF), which denied further review on 6 June 2007. As a result, your BCD was ordered executed and you were so discharged on 24 October 2007.

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

1. You were diagnosed with PTSD in 2004 following your combat deployment.
2. You believe that the outcome of your GCM was unfair because you refused treatment prior to your initial trial proceedings and were not diagnosed until after you were sentenced. Thus, your PTSD was not considered as mitigation during sentencing.
3. You recognize that the government was the victim of your offenses and apologize for being selfish and letting down the Marine Corps.
4. In the past 13 years, you claim to have started a nonprofit organization that helps struggling veterans feel normal and deal with their trauma by placing disabled veterans with service animals.

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 BCD based on your GCM conviction and sentence. While the Board carefully considered your contention of mitigation, the Board noted you admitted to committing the misconduct that formed the basis of your GCM conviction. Further, the Board noted your case was already corrected on appellate

review. Therefore, the Board determined the presumption of regularity applies to your BCD and no error exists with your record.

However, because you raised the issue of mental health, the Board also requested an AO. The AO stated in pertinent part:

There is evidence that he was diagnosed with combat-related PTSD during military service. However, this diagnosis was known and considered during the adjudication [appellate review] of his misconduct. As noted during his military service, it may be possible that the Petitioner's wrongful appropriation of the trigger assembly could be attributed in part to distraction or poor concentration due to mental health symptoms. However, it is difficult to attribute conspiracy and sale of weapons 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 a diagnosis of PTSD that maybe be attributed to military combat service. There is insufficient evidence that his misconduct may be attributed to PTSD."

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 diagnosis. 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, your desire for an upgrade to your characterization of service, your contentions, 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 candor and remorse, your service to your community, your mental health issues, the harshness of your punishment, 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 found that your conduct showed a complete disregard for military authority and regulations. Your conduct was sufficiently 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. Further, to the extent that you allege your PTSD was not considered in sentencing, the Board noted that appellate review addressed the issue of poor concentration or distraction which might have resulted in the wrongful appropriation of the trigger assembly. However, the Board determined, even if it was not considered, your conspiracy to steal multiple other military weapons required a level of intent which would not normally be mitigated by PTSD symptoms. Additionally, although you mention some post-service accomplishments, you did not submit any supporting evidence as proof of your rehabilitation or of your current work with veteran interests. Furthermore, 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. Therefore, the Board did not find an upgrade of your discharge to Other Than Honorable, General (Under Honorable Conditions), or Honorable to be warranted in the interests of justice. 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. While the Board considered your stated need for benefits to address your health concerns, they determined the severity of your misconduct outweighed any mitigation resulting from those factors.

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,

3/25/2026

