



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

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Docket No. 6432-25  
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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.

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 20 January 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 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 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) furnished by a qualified mental health professional. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

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 17 June 2002.
2. You participated in █ and █ from January 2003 to June 2003.
3. On 22 November 2003, you were involved in a vehicular accident resulting in the death of a civilian. You were subsequently charged by civilian authorities of felony gross negligent homicide, felony driving under the influence of alcohol beverage or drugs combined with a fatality, and driving above 0.08 legal limit of alcohol resulting in bodily injury.

4. On 27 January 2004, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to commission of a serious offense. You were informed of the basis for this recommendation and that the least favorable characterization of service you may receive is Under Other Than Honorable (OTH) conditions. You waived your right to consult with counsel and to present your case to an administrative discharge board. The commanding officer forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Marine Corps with an OTH characterization of service. The separation authority approved the recommendation and you were so discharged on 27 February 2004.

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 civilian arrest and conviction. While the Board carefully considered your contention for mitigation and argument that you were coerced into signing separation documents while in civilian confinement, the Board noted you did not deny committing the misconduct or provide evidence to substantiate your contention that you were denied due process. 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, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 19 November 2025. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. Temporally remote to his military service, he has received civilian mental health treatment for diagnoses of PTSD, alcohol use disorder, and other mental health concerns. A civilian mental health provider has considered that his diagnosis of PTSD may be attributed to military experiences, including the fatal vehicular accident. Unfortunately, it is difficult to attribute the Petitioner's decision to consume alcohol while the designated driver and subsequent fatal accident to symptoms of PTSD. Additionally, there are inconsistencies in the Petitioner's report of his substance use history that raise doubt regarding the reliability of his report.

The AO concluded, "There is post-service civilian evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to PTSD or another mental health condition."

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 the medical

evidence you provided. 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 relative youth and immaturity at the time of your misconduct, your mental health condition, the negative effect your discharge has had on your life, 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 causing a fatality while driving under the influence was too serious to be mitigated by the evidence you provided and the applicable mitigation factors. Additionally, the Board took into consideration the discrediting effect your misconduct had on the Marine Corps. 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. 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 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,

1/30/2026

