



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

██████████
Docket No. 6530-25
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.

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 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 board certified psychiatrist and licensed clinical psychologist. 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 your personal appearance was not necessary and considered your case based on evidence of record.

You have previous applied to the Board on at least five occasions. Your first request was considered on 10 April 2013, in which you contended that you believed your discharge would automatically be upgraded five years after your discharge. The Board found the factors you submitted insufficient to outweigh the seriousness of the misconduct for which you received a

punitive discharge and noted that there is no law or regulation which provides for the automatic upgrade of a discharge based solely on the passage of time.

You requested reconsideration and presented new evidence in the form of a Certificate of Rehabilitation from the state of ██████████ and a letter from your civilian defense attorney, addressing the civil charges for which you had been arrested during your active duty service. This information was considered on 4 November 2014, but your request was again denied, as the new information was determined not to be material to your punitive discharge in light of the seriousness of the multiple offenses for which you were tried and convicted by SPCM.

You then requested reconsideration on the basis of claims of post-traumatic stress disorder (PTSD), asserting that your PTSD contributed to your misconduct; however, you did not submit medical evidence in support of your claim. The Board considered your request on 6 January 2015 and again denied relief, determining that the severity of your misconduct outweighed your post-service diagnosis.

Your request was automatically reconsidered on 22 January 2016 under procedures which conformed with the ruling in *Lipsman v. Secretary of the Army*, 33F.Supp.2d 48 (D.D.C. 2004). Even applying liberal consideration to your contended PTSD, the Board again found insufficient evidence to outweigh the seriousness of the multiple offenses for which you were convicted by SPCM and adjudged a punitive discharge.

You again requested reconsideration of your PTSD contentions, which the Board considered in light of a medical AO which addressed your in-service mental health and post-service diagnoses. At that time, the objective evidence failed to establish that you suffered from a mental health condition at the time of your military service and misconduct. Your application also provided additional context for the circumstances of your misconduct. The Board again reconsidered your request on 21 June 2021 and again denied relief, primarily due to the severity of the offenses for which you were tried and convicted by SPCM.

The summary of your service remains substantially unchanged from that addressed in the Board's previous decision.

In your application to this Board, you express a desire for your discharge character of service be upgraded and have your record reflect that you were separated with a Secretarial Authority discharge. You contend that:

1. Your misconduct was for relatively minor offenses.
2. Your offenses were significantly mitigated under the guidance of new policy memos.
3. The Board's previous denial concurred with, and relied heavily on, an unfavorable AO.
4. Your previous filing was replete with evidence of your mental health issues.
5. You have submitted new evidence of experiencing PTSD during military service as well as temporary psychosis, most likely caused by a combination of medication and ganglion nerve blocks.

6. It has been nearly 30 years since your conviction, and your punitive discharge has served its purpose.

7. You are sorry for falling short of what was expected of you as a Marine.

8. You were granted an upgraded characterization of discharge to “under other than honorable conditions” by the Naval Discharge Review Board (NDRB) in 2012.

9. You were innocent of the offenses and your guilty plea was “essentially unlawfully induced”

10. You were not properly advised at the time of your plea of the impropriety of the prosecutors argument – namely, that you were “guilty by association” due to being related to someone involved in a crime.

11. You were innocent of the offenses of your SPCM and that, according to your former defense attorney, you only pleaded guilty out of fear.

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

The Board initially concluded you were appropriately discharged based on your SPCM conviction and sentence. While the Board considered your repeated denial of having committed misconduct, they found them to be without merit. The Board noted, at your SPCM trial proceedings, you were represented by qualified military defense counsel who presumably provided you with competent representation, to include informing you regarding the nature of your pleas in light of any defenses to those allegations, to include innocent injection, and advising you regarding evidence in extenuation and mitigation for purposes of sentencing. Further, in order to plead guilty, the military judge would have conducted a providence inquiry prior to entering any findings of guilty, to confirm that you fully understood the elements of the offenses to which you pleaded guilty and that you did, in fact, admit to having committed the necessary elements of those offenses. The Board thus found it insufficient evidence to support that you were, in fact, innocent of any of the 12 charges and offenses of which you were duly convicted. Therefore, the Board determined the presumption of regularity applies to your SPCM conviction and punitive discharge. The Board also determined no error exists with your record.

However, because you again contend that PTSD, due to childhood trauma which was exacerbated by military service, or another mental health condition affected the circumstances of the misconduct which resulted in your punitive discharge, the Board also considered the AO. The AO stated in pertinent part:

4. During military service, the Petitioner was evaluated by a military psychologist and received no mental health diagnosis. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation.

a. Temporally remote to his military service, the Petitioner has received civilian mental health treatment for diagnoses of PTSD and other mental health concerns attributed to his military service.

b. Temporally remote to his military service, civilian medical providers treating the Petitioner's chronic difficulties associated with his hand injury have considered that in-service medication reactions to treatment associated with his hand may have contributed to the Petitioner's misconduct.

c. *The Petitioner has consistently denied engaging in misconduct, claiming that it was mistaken identity with other family members, reprisal from toxic command leaders, or sabotage. The Petitioner denied intentional substance use, claiming that he may have unwillingly ingested the substance from his father. [emphasis added]*

d. Evidence from post-service providers suggests that it is possible that the Petitioner may have been experiencing symptoms of PTSD and other mental health concerns during military service. However, more weight has been placed on the lack of mental health diagnosis from the Petitioner's in-service psychological evaluation. Additionally, given that providers within the Department of the Navy are required to possess knowledge of expected duties and obligations of Sailors and Marines and render fitness-related determinations as part of their credentialing requirements and qualifications, I placed greater weight on the evaluation and assessment from the in-service mental health examiner and their readiness expertise. Although post-service providers raise concerns regarding the Petitioner's mental competency during service, *it is difficult to attribute his misconduct to a negative reaction to medication when he denies having engaged in the misconduct. [emphasis added]*

The AO concluded, "Based on a review of all available evidence, it is my considered clinical opinion that there is post-service evidence from civilian providers of diagnoses of PTSD and another mental health condition 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 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. Specifically, even if you were experiencing symptoms during your military service, these would have mitigated misconduct which you claim not to have committed. Furthermore, even if you were to go back and re-admit to the misconduct for which you were convicted, the Board observed that specific intent crimes such as theft are not of a nature which is typically mitigated by a mental health condition. 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 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 mental health issues, the harshness of your punishment, the evidence you provided in support of your application, the character references you provided for review, 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 the cumulative effect of your misconduct and the assault of a law enforcement officer, to be especially aggravating with respect to the severity of your offenses. Additionally, the Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. 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. 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. While the Board commends you for your post-service rehabilitation efforts and accomplishments, 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
