



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

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Docket No. 6598-25  
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 9 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). In addition, the Board considered an advisory opinion (AO) from a qualified mental health professional. Although you were provided an opportunity to respond to the AO, 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 23 August 1961.
2. On 26 March 1963, you received nonjudicial punishment (NJP) for assaulting another Marine.

3. On 14 September 1963, you were arrested by civil authorities and charged with breaking and entering a concessionary store.

4. On 11 October 1963, you were arrested by civil authorities and charged with grand theft auto. On 18 October 1963, you pleaded guilty to the charge of joy riding and hit and run. Subsequently, the court dropped the charge of grand theft auto.

5. On 12 November 1963, you passed out in front of the █ Fire Department. Consequently, the Fire Department summoned an ambulance who transported you to the hospital. You were later diagnosed with intoxication.

6. On 20 November 1963, you appeared in front of a civil judge and pleaded not guilty to the charge of breaking and entering.

7. On 21 November 1963, you were convicted by summary court martial (SCM) for wrongful use of provoking words, assault on two fellow Marines, and resisting arrest. You were sentenced reduction in rank, a period of confinement at hard labor, and forfeiture of pay. On 3 December 1963, your SCM sentence was approved and ordered executed by the convening authority.

8. On 10 December 1963, you were convicted by civil authorities for the offenses committed on 11 October 1963. You were sentenced to 60 days as condition of probation.

9. On 4 December 1964, you were found guilty of the charges of breaking and entering and larceny. You were sentenced to one year of probation on each count and a \$150.00 fine.

10. On 13 December 1963, you received an arrest warrant for violation of contempt of court.

11. On 17 December 1963, you were informed of your administrative separation processing for misconduct and decided to waive your procedural rights. Your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to civil court conviction. The separation authority approved the recommendation and you were so discharged on 11 February 1964.

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 and noted your argument that you were treated unfairly due to racial discrimination, the Board noted you did not deny committing the misconduct. Further, the Board determined the resolution of your misconduct by civil and military authorities was reasonable based on the nature of your misconduct and was not persuaded by your argument that racial animus formed the basis of your multiple convictions and NJP. 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 review process, a licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO on 21 November 2025. The Ph.D. stated in pertinent part:

The There is no evidence that he was diagnosed with a mental health condition in military service, although there is behavioral evidence of a possible alcohol use disorder. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to provide a nexus with his misconduct, particularly as larceny and joy riding are not typical symptoms of a mental health condition. Additional records (e.g., postservice mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The Ph.D. concluded, "it is my considered clinical opinion that there is insufficient evidence of diagnosed mental health concerns that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to mental health concerns."

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<sup>1</sup>. Applying such liberal consideration, the Board found insufficient evidence of a diagnosis of mental health condition that may be attributed to military service. This conclusion is supported by the AO and the fact you provided no medical evidence in support of your claim. Additionally, 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, 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 service to your community, the character reference you provided for review, your health conditions, 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

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<sup>1</sup> The Board noted you did not specify which mental health condition you attribute to your misconduct. Therefore, the Board considered your contention under the Hagel and Kurta Memos.

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 considered the discrediting effect your civil convictions 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. 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 Department 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 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

