



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

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Docket No. 6691-25
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 qualified mental health provider. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You previously applied to the Board contending that your discharge was “unjustifiable.” Your request was considered on 13 January 2001 and denied. The Board noted at that time that you had been afforded considerable clemency when your request for separation in lieu of trial by court-martial was granted, to include avoiding potential penalties of a punitive discharge and confinement at hard labor, and you had therefore received the benefit of your bargain.

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

1. You enlisted in the Marine Corps and began a period of active duty on 24 February 1972.
2. On 5 May 1972, you received your first nonjudicial punishment (NJP) for failure to obey a lawful order to only smoke when authorized, in violation of Article 92, Uniform Code of Military Justice (UCMJ).
3. On 17 July 1972, you were dropped from the aviation course due to a lack of aptitude.
4. On 6 September 1972, you then received a second NJP for UCMJ violations of Article 91, for willfully disobeying a corporal's instruction to participate in physical training, and Article 134, for communicating a threat to a sergeant to take him behind the building and "thump" him.
5. On 31 October 1972, you received your third NJP for two specifications under Article 86, UCMJ, for unauthorized absences from your appointed place of duty.
6. On 9 November 1972, you received your fourth NJPs for two specifications under Article 91, for willfully disobeying a lawful order and for being disrespectful toward a corporal.
7. On 12 December 1972, you received your fifth NJP for laying down on your post while posted for guard duty in violation of Article 113, UCMJ.
8. On 7 January 1973, you were issued administrative counseling warning you that you had received numerous NJPs, your performance of duties was poor, and you might be processed for administrative separation should you not correct your deficiencies.
9. The next day, you commenced a period of UA that terminated on 15 January 1973. Upon your return, disobeyed a lawful order from a noncommissioned officer and failed to go to your appointed place of duty.
10. On 16 January 1973, you disobeyed orders from a Lance Corporal and commissioned officer, and failed to go to your appointed place of duty.
11. On 17 January 1973, you commenced another period of UA that terminated on 7 April 1973.
12. In May 1973, charges for the aforementioned misconduct were referred to special court-martial. You consulted legal counsel, who advised you of your rights, and, on 8 June 1973, you requested separation in lieu of trial for the good of the service. Your request was approved and you were so discharge under Other Than Honorable (OTH) conditions on 29 June 1973.

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

1. Your enlistment guaranteed aviation school and you were an excellent recruit, but you were transferred out after only two weeks into rifleman training.
2. You experienced drastic changes in scores after your transfer due to harassment, racism, and injury, to include severe hearing loss.
3. Your service-incurred hearing loss was so severe that you may not have been able to hear certain orders or commands for which you were punished.
4. You are now functionally deaf with a cochlear implant.
5. You have also been diagnosed, post-discharge, with service-related PTSD.

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 and request to be discharged in lieu of trial by court-martial. While the Board considered your exculpatory arguments regarding your misconduct, the Board noted you provided no evidence, other than your statement, to substantiate your contentions. Therefore, the Board determined the presumption of regularity applies to your administrative separation and no error exists with your record.

However, because you contend that post-traumatic stress disorder (PTSD) or another mental health condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

There is no evidence that the Petitioner suffered from a mental health condition while in military service. He submitted a diagnosis of PTSD that is temporally remote to service; furthermore, the documentation provided (one medication management note) does not discuss the etiology of/rationale for the diagnosis of PTSD. Thus, a nexus cannot be provided between his post-service diagnosis of PTSD and his in-service misconduct. It is unfortunate that the Petitioner had a traumatic childhood as per his anecdote, however he did not mention any potential mental health symptoms or problems during his enlistment physical. Additional records (e.g., active-duty medical records, post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his separation) may aid in rendering an alternate opinion.

The AO concluded, "Based on the available evidence, it is my clinical opinion that there is sufficient evidence of a diagnosis of PTSD that is temporally remote to service. There is insufficient evidence to attribute his misconduct to any mental health condition or 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 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

your medical evidence is temporally remote to your service and does not provide the etiology for your PTSD diagnosis. 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. 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 regarding your childhood and circumstances surrounding your misconduct, the totality of your service to include service highlights, your need for veterans' benefits, your relative youth and immaturity at the time of your misconduct, your rehabilitation efforts, your post-service record of accomplishments, your mental health issues, the evidence you provided in support of your application, your advanced age, 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. 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. 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, as before, the Board also noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial, thereby sparing you the stigma of a court-martial conviction and possible punitive discharge. While the Board acknowledged the personal difficulties you have endured, 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,

4/6/2026

