



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

Docket No. 6816-25
Ref: Signature Date

Dear [REDACTED]

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 1 April 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 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). Additionally, the Board also considered an advisory opinion (AO), furnished by qualified mental health provider, that was considered favorable to you.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the 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 U.S. Marine Corps and began a period of active duty service on 2 December 2008. Your enlistment physical examination, on 12 November 2008, and self-reported medical history both noted no neurologic or psychiatric conditions or symptoms.
 2. While still in your initial training pipeline, on 17 May 2009, you commenced a period of unauthorized absence (UA). Your command declared you to be a deserter on or about 18 June 2009. Your UA terminated with your arrest by civilian authorities in ██████████, ██████████ on 20 October 2009.
 3. On 20 November 2009, pursuant to your guilty plea, you were convicted at a Summary Court-Martial (SCM) of your 156-day UA. The SCM Officer sentenced you to restriction for sixty (60) days. On 25 November 2009, the Convening Authority approved the SCM sentence.
 4. On 4 December 2009, your command notified you of administrative separation procedures by reason of misconduct due to the commission of a serious offense. You consulted with counsel and elected to waive your rights to submit statements and present your case at a hearing before an administrative separation board.
 5. Your commanding officer (CO) recommended to the Separation Authority (SA) that you should receive an under Other Than Honorable conditions (OTH) discharge characterization. In his recommendation, your CO stated, in pertinent part:

I interviewed ██████████ extensively on 2 December 2009. SNM joined the Corps because he was bored at college and wanted to improve his life. He claims he was allegedly suffering from stress due to the travails of the Marine Corps and decided he needed to desert to escape it all. He was apprehended by authorities. He has no desire to be retained and will desert again if retained. This Marine just wants to move on with his life and is prepared to face the consequences. He has no further capacity to serve. Due to his serious actions and disregard for Marine Corps Policy, I recommend he be separated without further consideration.
 6. On 8 December 2009, the Staff Judge Advocate to the SA determined that your separation proceedings were legally and factually sufficient. Ultimately, the SA approved and directed your OTH discharge for misconduct with an RE-4 reentry code. On 15 December 2009, you were so discharged from the Marine Corps.
 7. Post-service, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade and were denied on 6 February 2012. However, on 26 January 2024, the NDRB reconsidered your original application pursuant to the settlement agreement in *Manker v Del Toro* and upgraded your discharge characterization to “General (Under Honorable Conditions).” The NDRB made no other conforming changes to your DD Form 214.
- In your application to this Board, you express a desire for your discharge character of service be upgraded with changes to your reason for separation and reentry code. You contend that:

1. Your discharge was unfair at the time and remains so now.

2. Your discharge was procedurally defective and inequitable.
3. You are requesting and should receive liberal consideration.
4. It would be inequitable not to review and upgrade your discharge.
5. Your chain of command failed to acknowledge or address your behavioral health challenges during service.
6. Such procedural shortcomings directly contributed to your withdrawal from your duties and resulting UA.

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. The Board noted you admitted to committing the misconduct that formed the basis of your administrative separation and OTH discharge. While the Board noted your contention that your discharge was procedurally defective, it found no evidence to support such a finding. Based on your extended UA and SCM conviction, the Board determined you were properly processed for administrative separation based on a commission of a serious offense. In reviewing your administrative separation package, the Board observed that all procedures, leading up to your discharge, were conducted in accordance with applicable service regulations. Therefore, absent substantial evidence to the contrary, the Board determined the presumption of regularity applies to your administrative separation and no error exists with your record.

However, because you raised the issue of mental health, the Board also requested an AO. A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records and issued an AO on 3 December 2025. As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

During military service, and while UA, the Petitioner received a psychological evaluation. A civilian provider diagnosed him with PTSD and other mental health concerns attributed to military service. It is possible to consider UA as a behavioral indicator of avoidance consistent with PTSD.

The Ph.D. concluded, "Based on a review of all available evidence, it is my considered clinical opinion that there is in-service evidence from a civilian provider of diagnoses of PTSD and other mental health concerns that may be attributed to military service. There is post-service evidence from the Petitioner 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 in-service diagnosis. Additionally, after applying liberal consideration, the Board found sufficient evidence to conclude that the misconduct for which you were discharged could be attributed to your mental health condition. In this regard, the Board again relied upon the AO. However, 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 156-day UA more than outweighed the potential mitigation offered by any mental health conditions.

In addition to applying 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, the Board also considered the totality of the circumstances to determine whether equitable relief was 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 and changes to your reason for separation and reentry code, your contentions, 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 rehabilitation efforts and post-service accomplishments, your mental health issues, the evidence you provided in support of your application, 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 your 156-day UA 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. Further, the Board considered the discrediting effect your civilian apprehension had on the Navy. 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. In making this finding, the Board also considered the NDRB grant of relief that upgraded your OTH characterization of service to GEN. The Board concluded this was significant clemency that offset the mitigation factors in your case. Further, while the Board noted that flawless service is not required to receive an Honorable characterization of service, the nature and gravity of your misconduct led them to conclude that your service was not Honorable. 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. Thus, even though the Board commends you for your post-service accomplishments and 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. Based on the same rationale, the Board also determined your reason for separation and reentry code are correct and remain appropriate.

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,

4/8/2026

