



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

██████████
Docket No. 7080-25
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.

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 10 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 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.

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 a personal appearance was not necessary and considered your case based on 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:

- You enlisted in the Marine Corps and began a period of active duty on 10 December 2001. After a period of continuous Honorable service, you immediately reenlisted on 31 October 2005.
- From August 2006 through February 2007, you deployed in support of Operation Iraqi Freedom (OIF).
- On 1 October 2008, when you were found guilty at a General Court-Martial (GCM) for the lesser included offense of violating Article 119, Uniform Code of Military Justice (Involuntary Manslaughter) after killing your six-year old dependent child by striking her with your hands and fists and stomping her with your feet. The adjudged sentence included reduction to the paygrade of E-1, eight years confinement with total forfeitures of pay, and a Dishonorable Discharge (DD). Your DD was executed on 13 September 2011, following appellate review and affirmation of the findings and sentence. In particular, the Navy Marine Corps Court of Criminal Appeals found that your sentence was not inappropriately severe, even in light of mitigating factors which included your post-traumatic stress disorder (PTSD) and evidence of rehabilitation.

In your application to this Board, you express a desire for your discharge character of service be upgraded and your reason for separation be changed to Secretarial Authority. You contend that:

- Your PTSD, which was not diagnosed prior to your misconduct, contributed to your involuntary manslaughter of your child. Your diagnosis was identified during psychiatric evaluation incident to your trial proceedings and was submitted as mitigating evidence of your lack of criminal intent.
- You have no history of violence either prior to or after the incident.
- Your performance in-service prior to the incident was stellar, your post-discharge conduct has been exemplary, and the Department of Veterans Affairs (VA) has since diagnosed your PTSD and provided treatment for it in addition to deciding that your character of service is Honorable for VA purposes.

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

The Board initially concluded you were discharged with a DD based on your GCM conviction and sentence. The Board noted your conviction and sentence were affirmed on appellate review, and you do not contest the legality of your conviction. Therefore, the Board determined the presumption of regularity applies to your DD and no error exists with your record.

However, because you primarily contend that post-traumatic stress disorder (PTSD) 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:

Petitioner was appropriately referred for psychological evaluation and properly evaluated by multiple military mental health providers during his enlistment. The

psychiatrist who followed the Petitioner over several months of treatment did not find evidence of a diagnosis of PTSD, but only evidence of a mental health diagnosis due to the Petitioner's legal stressors.

A forensic psychiatrist who evaluated the Petitioner for several hours prior to his court martial trial diagnosed the Petitioner with combat-related PTSD, and determined that the circumstances surrounding the death of the Petitioner's daughter may have been related to the Petitioner's combat PTSD. Temporally remote to the Petitioner's service, the forensic psychiatrist's opinion is unchanged and the VA have granted service connection for PTSD.

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. It is difficult to render an opinion when providers differ in their formulation of the case. However, I have placed greater weight on the evaluation and assessment from the psychiatrist who treated the Petitioner over several months over the psychiatrist who evaluated the Petitioner over several hours. It is possible that the Petitioner may have been experiencing symptoms of undiagnosed PTSD during military service. However, it is difficult to attribute his misconduct to PTSD. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "Based on a review of all available evidence, it is my considered clinical opinion that there is some in-service evidence and post-service VA evidence of a diagnosis of PTSD that may be attributed to military combat service. There is insufficient evidence that his misconduct may be attributed 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 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 temporally remote diagnosis from the VA. 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 concurred with the rationale expressed 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 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 change to your reason for separation, your contentions, the totality of your service to include service highlights, 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 reference 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 that your conduct showed a complete disregard for military authority and regulations. 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. In reviewing the details regarding the circumstances of your child's death, the Board observed that your violent actions toward your child were not merely an immediate instance of excessive force; rather, your actions took place over a period of time with more than a single instance of assault upon her. Although the Board acknowledged, consistent with your GCM conviction, that you lacked the criminal intent to cause her death, the fact remains that your actions did directly contribute toward that end. 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. The Board acknowledged the profound impact your conviction and the loss of your child have had on you and your family. Nevertheless, due to the extreme severity of the offense—specifically, the violent death of your child at your hands—the Board determined that the mitigating factors do not warrant an upgrade to your punitive discharge. While the Board commends you for your post-service accomplishments and rehabilitation efforts, 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,

4/20/2020