



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

██████████
Docket No. 7578-25
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 15 May 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.

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

- You enlisted in the Marine Corps and began a period of active duty on 8 June 1988. As part of your enlistment processing, you admitted to a pre-service history of petty offenses.

– On 9 December 1988, you received your first nonjudicial punishment (NJP) for violating Article 128, Uniform Code of Military Justice (UCMJ), by wrongfully assaulting a private/E-1 at dining facility by stabbing him in the face with a fork.

– On 8 February 1989, you received your second NJP for UCMJ violations that included Article 91, by insubordinate conduct toward a noncommissioned officer, in that you disobeyed a lawful order and were disrespectful; Article 92, for failure to obey lawful order by not being in the proper uniform; and Article 117, for making provoking speech or gestures toward another service member.

– On 19 April 1989, you received a third NJP for violations of Article 91, UCMJ, due to disobedience of a lawful order, in that you refused to turn down your stereo when ordered to do so by the duty noncommissioned officer and, disrespect toward a noncommissioned officer in your language and deportment. In light of these repeated offenses, on 25 April 1989, you received a mental health evaluation with a psychiatric report which only noted antisocial personality traits.

– On 25 July 1989, you were convicted by General Court-Martial (GCM) of violating Article 128, UCMJ, by committing assault upon another Marine, with intent to inflict grievous bodily arm with a sharp cutting instrument. Specifically, you cut another Marine about the chest, neck, back, and facial area, inflicting multiple lacerations and, in fact, causing grievous bodily harm. You were sentence to a two-year period of confinement at hard labor, forfeiture of \$650 pay per month for the duration of your confinement and a punitive Bad Conduct discharge (BCD).

– While incarcerated, you applied for clemency; however, your request was denied on 14 March 1990. Your BCD was approved and ordered executed, and you were so discharged on 13 December 1990.

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

– You suffered mental health symptoms, including PTSD, during your military service. Therefore, your application should be reviewed with liberal consideration due to these mental health contentions.

– You have also been proactive in improving your life following your post-service incarceration for possession of illegal substances. You now are seeking veteran benefits to treat his mental health concerns.

In support of your request, in addition to your legal counsel's brief, you submitted a personal statement, a letter of support from your spouse, psychiatric treatment notes, your Department of Veterans Affairs (VA) records which indicate that you are receiving treatment, and your full OMPF,

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

The Board initially concluded you were appropriately discharged with a BCD based on your GCM conviction and sentence. The Board noted you do not deny committing the misconduct that formed the basis of your GCM conviction and sentence. Therefore, the Board determined the presumption of regularity applies to your BCD 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:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. He received no formal mental health diagnosis, based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the military psychologist. While problematic characterological traits were noted, he did not receive a formal personality disorder diagnosis and was deemed responsible for his behavior and psychologically fit for duty. He has provided evidence of mental health concerns that are temporally remote to his military service and appear unrelated. 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 place greater weight on the evaluation and assessment from the in-service mental health examiner over the post-service medical records. 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 insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to a 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 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 you provided is temporally remote from your service. 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 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, your contentions, 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, the negative effect your discharge has had on your life, your rehabilitation efforts, your mental health issues, the harshness of your punishment, the evidence you provided in support of your application, the advocacy letter 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. The Board observed you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct, which led to your BCD. 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. The Board observed that, through your brief period of military service, you demonstrated a clear pattern of insubordination, disrespect, and propensity for violence. The Board found the severity of the injuries you inflicted upon a fellow Marine particularly shocking. 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. While the Board commends you for your 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,

6/10/2026

