



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

██████████
Docket No. 8061-25
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 12 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) 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 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 18 October 1994. After a period of continuous Honorable service, you immediately reenlisted on 3 November 1998.

- On 20 September 2001, you were issued administrative counseling documenting the results of a Family Advocacy case which substantiated level 4 spousal abuse by you, against your spouse, with a military protective order (MPO) issued.

– On 1 March 2002, you were tried before General Court-Martial (GCM) and found guilty of violating Article 128, Uniform Code of Military Justice, under specification two of the charged offense, for unlawfully striking your spouse with close fist. You were also found guilty of violating Article 128, an additional charge, for unlawfully striking your spouse by grabbing her hair and striking her in the face with your knee, although this charged had been amended to include the element of grievous bodily harm, the finding of guilty made exception to that additional element. You were sentenced to reduction to the paygrade of E-2, 60 days of hard labor without confinement, and 60 days of restriction.

– On 29 March 2002, you were notified of processing for administrative separation by reason of commission of a serious offense (COSO). You were informed that the least favorable characterization of service you might receive could be under Other Than Honorable (OTH) conditions and you exercised your right to request a hearing before an administrative separation board (ADB). Although your commanding officer recommended that you be discharged under OTH conditions, your officer-in-charge provided a letter of support for your discharge proceedings recommending that you be retained.

– On 30 July 2002, your ADB convened and found that the basis for separation was substantiated by a preponderance of the evidence. Although the ADB recommended that you be separated with an OTH characterization of service, it also recommended suspension of your separation. Regardless, because your GCM did not adjudge a punitive discharge, any separation under OTH conditions would have to be forwarded for review and decision by the Commandant of the Marine Corps in accordance with Marine Corps regulations. In light of that time constraint, on 28 August 2002, the Staff Judge Advocate (SJA) recommended that you be issued a General (Under Honorable Conditions) (GEN) discharge. This memo noted that your wife (at the time), while not deserving a beating, became an assault victim as a result of a fight that began with you refusing to give her money so she could buy illegal, controlled substances. The SJA also noted you're your end of obligated service was in November 2002, thus it was best to expeditiously discharge you with a characterization of GEN rather than pursue an OTH. As a result, on 5 September 2002, the Commander, Marine Corps Base ██████████ approved your separation under honorable conditions and you were so discharged on 13 September 2002.

– You previously applied to the Naval Discharge Review Board (NDRB) contending that you were properly punished by virtue of your GCM conviction and the continued punishment of a less than Honorable discharge was unjust when considering that you had prevented a possible drug occurrence within your home, handling it the best you could at the time. You also noted that you had remained productive in your duties until the end and that members of your jury decided that your discharge was not in the best interest of the Marine Corps. Your request was considered on 30 April 2004 and denied. However, at that time, the NDRB corrected an error in your discharge record with respect to the missing period of continuous Honorable service from first enlistment which had originally been omitted.

In your application to this Board, you express a desire for your discharge character of service be upgraded and contend that you were experiencing an undiagnosed mental health condition during your military service which was not addressed before you were discharged. This purported condition was getting worse, but without diagnosis or treatment, and extended after your service.

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 GEN discharge. Therefore, the Board determined the presumption of regularity applies to your GEN discharge and no error exists with your record.

However, because you contend that a 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 was diagnosed with or suffered from any mental health condition/symptoms while in service. He did not submit any medical evidence in support of his claim. His personal statement is not sufficiently detailed to provide a nexus between any mental health condition and his in-service misconduct. 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 insufficient evidence of a mental health condition that existed in service. There is insufficient evidence to attribute his misconduct to any 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 Kurta Memo. 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 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 Kurta Memo, 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, the negative effect your discharge has had on your life, your claimed mental health issues, 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 noted that, following your GCM conviction without a punitive discharge, you received a full and fair hearing from an ADBD. The ADBD naturally found the alleged serious offense to be substantiated and, despite its recommendation that you be retained until your separation, did recommend that your characterization of service otherwise should be other than honorable. While the Board acknowledged that you had served a significant period across your first and second enlistments without any substantial misconduct, and you were within two months of completing your obligated service at the time of your discharge, the Board found that it was the discretion of the Commander, Marine Corps Base [REDACTED] to determine whether to retain you, to discharge you honorably or under honorable conditions, or to forward a request to the Commandant of the Marine Corps that you be discharged with an OTH characterization of service. In light of this discretion, the Board concluded that your discharge under honorable conditions afforded considerable clemency with respect to the favorable factors which were already present in your service record. 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 that you did not submit any evidence of post-service character or accomplishments for consideration of further clemency. Finally, 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. 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,

6/3/2026
