



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

██████████
Docket No. 8068-25
Ref: Signature Date

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████████████████

Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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.

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 16 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, 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 an advisory opinion (AO), furnished by a qualified mental health professional on 17 December 2025. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You previously applied to this Board in 1982, 2015 and 2018, and were most recently denied relief on 7 October 2019. 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. However, the summary of your service remains substantially unchanged from that addressed in the Board's previous decisions.

1. You enlisted in the Marine Corps and began a period of active duty on 28 October 1976.
2. On 18 December 1976, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 92 (changing positions during 200-yard slow

fire with an unsafe weapon). You were awarded punishment of three days of correctional confinement and forfeiture of \$50 pay per month for one month.

3. On 27 September 1977, you received a second NJP for violation of UCMJ Article 86 (unauthorized absence (UA) from 1445 to 1600 to 17 September 1977). You were awarded punishment of forfeiture of \$50 pay per month for one month (suspended for two months) and seven days of restriction (suspended for three months).

4. On 25 April 1978, you received a third NJP for violation of UCMJ Article 91 (failure to get out of your rack when ordered to do so on 17 March 1978) and Article 86 (UA from Ammo Security Guard House at 0600 on 17 March 1978). You were awarded punishment of forfeiture of \$100 pay per month for one month.

5. In May 1978, you endorsed symptoms of depression but were deemed qualified for service during a physical examination.

6. On 8 June 1978, you received a fourth NJP for violation of UCMJ Article 86 (absent yourself from your place of duty on 30 May 1978) and Article 91 (did become disrespectful toward a corporal). You were awarded punishment of forfeiture of \$100 pay per month for one month and seven days of correctional custody (suspended for four months).

7. On 10 December 1978, while onboard ██████████, you hit your head and required medical attention to treat your head trauma. You reported experiencing headaches.

8. On 10 August 1979, you received a fifth NJP for violation of UCMJ Article 134 (unauthorized consumption of alcoholic beverage while posted as ADNCO), Article 89 (disrespected toward a 2ndLt), Article 90 (willfully disobeying a 2ndLt), and Article 86 (UA from 1-2 August 1979). You were awarded punishment of forfeiture of \$80 pay per month for one month and seven days of correctional custody (suspended for six months).

9. On 2 February 1979, you were found guilty at summary court martial proceedings for violating UCMJ Article 86 (UA from 24-25 December 1978) and Article 91 (striking a corporal with your fist). You were sentenced to forfeiture of \$150 pay per month for 1 month, 15 days confinement at hard labor, and reduction in rank to E-2 (suspended for six months).

10. On 24 October 1979, you received a sixth NJP for violation of UCMJ Article 86 (did fail to go to the police shed at the prescribed time). You were awarded punishment of forfeiture of \$85 pay per month for one month and seven days of correctional custody (suspended for six months).

11. On 14 November 1979, you were found guilty at special court martial proceedings of violating UCMJ Article 89 (disrespect toward a 2ndLt), Article 91 (two specifications: disrespect toward a GySgt and willfully disobey a lawful order from a GySgt), and Article 134 (communicating a threat to a 2ndLt). You were sentenced to confinement at hard labor for three months, forfeiture of \$200 pay per month for three months, and reduction in rank to E-1.

12. On 5 December 1979, you were notified that administrative separation proceedings had been initiated against you due to your misconduct. You acknowledged your rights and waived both representation by counsel and to appear before an administrative separation board.

13. On 24 January 1980, the Assistant Chief of Staff, Staff Judge Advocate reviewed your proceedings for administrative discharge and found them to be sufficient in law and fact.

14. Ultimately, on 20 February 1980, you were discharged from the Marine Corps on the basis of Misconduct (Frequent Involvement) with an Other Than Honorable (OTH) characterization of service, separation code of JKA-1, and a reentry code of RE-4.

In your application to the Board, you request an upgrade to your characterization of service to either General (Under Honorable Conditions) or Honorable, the removal the JKA-1 separation code, and a change to your narrative reason for separation. You contend

1. You suffered a clear head injury (TBI) while in service and, consistent with the Kurta Memo, your characterization of service warrants review.
2. Your TBI outweighs the severity of your misconduct.
3. The mitigation factors in your case also support relief.

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 did not deny committing the misconduct that formed the basis of your administrative separation and OTH discharge. Further, you did not appeal the guilty findings of your six NJPs, you were found guilty of violating the UCMJ at both summary court martial and special court martial, and a Staff Judge Advocate reviewed your administrative separation proceedings for sufficiency in law and fact prior to your discharge from the Marine Corps. Therefore, the Board determined the presumption of regularity applies to the finding that you committed the misconduct that formed the basis of your administrative separation and no error exists with your reason for separation or OTH characterization of service.

However, because you raised the issue of a traumatic brain injury (TBI), the Board also requested an AO. As part of the Board's review, a qualified mental health provider reviewed your contentions and the available records and issued an AO on 17 December 2025. The AO stated in pertinent part:

During military service, the Petitioner was evaluated and diagnosed with an alcohol use disorder. Temporally remote to his military service, the VA has granted service connection for TBI. A VA medical provider has also noted other mental health conditions that are considered to have onset during military service. Although UA and substance (abuse) can be considered behavioral indicators of TBI or other

mental health concerns, there is insufficient information in this case to make that determination. The Petitioner had a history of engaging in misconduct prior to the head injury. Within two months of his head injury, the Petitioner denied any history of traumatic injury. Shortly after military service, the Petitioner denied engaging in misconduct, claiming that his separation was due to reprisal and scapegoating. More weight has been placed on service records over recall. 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 that "Based on a review of all available evidence, it is my considered clinical opinion that there is post-service evidence from the VA of diagnoses of TBI and a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to TBI or a mental health condition, other than a possible alcohol use disorder."

The Board applied liberal consideration to your claim of TBI as well as other possible mental health condition(s) and to the effect that these condition(s)/experience may have had upon the conduct for which you were discharged in accordance with the Kurta Memo. Applying such liberal consideration, the Board found sufficient evidence to conclude that you suffered from a TBI and a mental health condition during your military service. This conclusion is supported by the AO and your post-service evidence. However, even applying liberal consideration, the Board found insufficient evidence to conclude all the misconduct for which you were discharged was excused or mitigated by your condition and/or experience. In making this determination, the Board noted that four of your six NJPs occurred prior to your in-service medical treatment for head trauma. Further, the Board agreed with the AO that you initially denied committing the offenses. Moreover, even if the Board assumed that the misconduct that occurred after December 1978 was somehow attributable to any mental health conditions including TBI, the Board unequivocally concluded that the nature and frequency 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 contentions, the totality of your service, your relative youth and immaturity at the time of your misconduct, your current mental health issues, the evidence you provided in support of your application, your advanced age, the passage of time since your discharge, and your desire for veterans' benefits.

The Board found that the mitigating factors were not nearly sufficient to justify any equitable relief. Specifically, the Board found that the frequency and nature of your misconduct far outweighed all of the mitigating factors combined. In particular, the Board determined that the severity of disrespect toward superiors, striking a superior Marine, and consumption of alcohol while on duty were contrary to military core values and policy, and posed an unnecessary degradation to a unit's cohesion and readiness. 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, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. While the Board considered your age and possible need for benefits to address your health concerns, they determined the severity of your misconduct outweighed any mitigation resulting from those factors. 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. Therefore, the Board did not find an upgrade of your discharge to be warranted in the interests of justice. Based on the same rationale, the Board also determined both your reason for separation and corresponding separation authority remain appropriate.

Accordingly, given the totality of the circumstances, the Board determined 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,

4/2/2026

