



Docket No. 8310-25
Ref: Signature Date

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.

Although you did not file your application in a timely manner, the statute of limitation was waived in accordance with. A three-member panel of the Board, sitting in executive session, considered your application on 24 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 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, 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) furnished by a qualified mental health professional and your response to the AO.

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 Marine Corps and began a period of active duty on 3 January 1989.

2. On 19 December 1989, you were issued an administrative remarks informing you that you were not recommended for promotion to lance corporal (LCPL) due to your substandard performance and personal appearance.

3. On 18 January 1990, you were issued your second administrative remarks informing you that you were not recommended for promotion to LCPL due to your failure of your physical fitness test.

4. On 28 February 1990, you were issued your third administrative remarks informing you that you were not recommended for promotion to LCPL due to substandard performance and being placed on the weight control program.

5. On 7 January 1991, you received non-judicial punishment (NJP) for false official statement and failure to go at the time prescribed to your appointed place of duty, to wit: rifle range.

6. On 11 March 1991, you were evaluated by a medical board and diagnosed with bilateral pes planovalgus feet with tight tendon Achilles. You were recommended for administrative discharge.

7. On 5 April 1991, you were issued an administrative remarks (Page 11) counseling concerning your failure to conform to the Marine Corps weight standards. You were advised that failure to take corrective action may result in administrative separation or limitation of further service.

8. On 15 July 1991, special court-martial (SPCM) charges were preferred against you for procuring \$3,000 in long-distance telephone services from AT&T by falsely pretending to be the authorized user of several calling cards.

9. On 26 July 1991, you submitted a written request for separation in lieu of trial by court-martial (SILT) for obtaining services under false pretenses, in violation of Article 134, Uniform Code of Military Justice (UCMJ). Prior to submitting this request, you conferred with a military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you admitted your guilt to the foregoing offense and acknowledged that your characterization of service upon discharge would be under Other Than Honorable (OTH) conditions.

10. The separation authority approved your request and directed your commanding officer to discharge you with an OTH characterization of service by reason of SILT. You were so discharged on 15 November 1991.

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

1. You were given a calling card and did not know that the card was an unauthorized calling card.

2. You believe that you were set up because you were not liked among certain individuals.
3. You were informed by legal counsel that it would be in your best interest to leave the service with an OTH discharge rather than a punitive discharge or possible jail time.
4. You were young and feared the possibility of jail time.
5. You did not seek representation at the time or the advice of your parents or family members.
6. You feel there was an injustice committed towards you since you were awaiting a medical discharge.

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 admission of misconduct and SILT request. The Board considered your contention that you were unaware the calling cards you utilized were an “unauthorized” card but was not persuaded. As previously discussed, you admitted guilt to the court-martial charge and requested to be discharged in lieu of facing a trial. Therefore, 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. As part of the Board’s review, a qualified mental health professional reviewed your request and provided the Board with an AO on 8 January 2026. The AO noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition, although there is behavioral evidence of a possible alcohol use disorder. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given statements that he didn’t know his use of the phone card was wrongful. 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 diagnosis of PTSD that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to PTSD.”

In response to the AO, you submitted additional documentation in support of your application. After reviewing your rebuttal evidence, the AO remained unchanged.

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 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 agreed with the AO's rationale that a mental health condition cannot mitigate misconduct you continue to deny committing. 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 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 desire for an upgrade to your characterization of service, your contentions, the totality of your service, your need for veterans' benefits, 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, your post-service record of accomplishments, your service to your community, your current health issues, the evidence you provided in support of your application, the character references 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 OTH discharge. 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 unit. Additionally, the Board noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and possible punitive discharge. 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 was also not persuaded by your argument that an injustice occurred since you actually didn't commit the misconduct resulting in your court-martial charge and only requested separation because you were afraid of being incarcerated. The Board found that you already received the benefit of your bargain since you did avoid incarceration and any other punishment

that is authorized for a SPCM conviction. The fact you feared being incarcerated for your conduct was sufficient evidence to the Board that you understood the evidence against you was sufficient to potentially convict you and result in a sentence of confinement, a punitive discharge, and/or forfeitures. Thus, the Board found no injustice with the fact you were separated in accordance with your request, despite the fact you were pending a disability discharge, because you received exactly what you bargained for based on your evaluation of the evidence in your case. Further, the Board also determined your contention that you did not seek legal representative to be not supported by the record since your assigned defense counsel wrote an endorsement to your SILT request advocating to the separation authority that your request be approved. The Board found this consistent with existing policy that requires defense counsel to be automatically assigned to Marines who are facing court-martial charges. Based on these factors, 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 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

