



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

■
Docket No. 8563-25
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 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 21 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, 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)/mental health condition (MHC) (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). Additionally, the Board considered an advisory opinion (AO) from a qualified mental health professional. Although you were provided an opportunity to respond to the AO, 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 28 May 1976.
- Between December 1976 and September 1977, you received non-judicial punishment (NJP) on four occasions for theft of property from the Navy Exchange, drunk and disorderly conduct onboard a Navy bus, sleeping on post, and possession of marijuana.

- On 4 November 1977, you submitted a written request for an Other Than Honorable (OTH) discharge in order to avoid trial by court-martial for failure to obey an order or regulation, having been found drunk on duty, assaulting another Marine, and breaking restriction. Prior to submitting this request, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Your request was approved and you were so discharged on 2 December 1977.

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

- You called the Department of Veterans Affairs (VA) in 2006 on an upgrade program, and they confirmed that your DD 214 had been upgraded.¹

- In 2009, you wrote the ■ records office and received a DD 214 that still showed an OTH status.

- The “■ VSO” is uncooperative on this matter.

- During boot camp, a drill sergeant assaulted you and a couple of others in the platoon by throwing trash cans at you and knocking you down. You had a few minor write-ups after this event with a distorted view of authority, brought alcohol into the barracks, and this led to the discharge.

- You are about to be released from incarceration and checking your records to ensure your eligibility for different programs.

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 request to be discharged in lieu of trial by court-martial. The Board noted you did not deny committing the misconduct that formed the basis of your administrative separation and OTH discharge. Therefore, the Board determined the presumption of regularity applies to your OTH discharge 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 process, a qualified mental health professional reviewed your contentions and the available records and issued an AO on 16 January 2026. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with PTSD, or any other mental health condition in service. He did not submit any medical evidence in support of his claim. His personal statement is not sufficiently detailed to provide a

¹ The Board noted that a VA “upgrade program” would not result in a change to your DD Form 214 discharge characterization since the VA has no authority to change Department of War (DOW) records. This was true in 2006 and remains true even now. Therefore, it is possible your characterization of service for VA eligibility purposes may have been changed but this would have no effect on your military record maintained by the DOW. The Board recommends you speak directly to the VA, vice a VSO, to ascertain your eligibility for VA programs.

nexus between a mental health condition or PTSD and his in-service misconduct. Furthermore, his account of what caused symptoms of PTSD does not meet criteria as per DSM-V-TR guidelines. 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 PTSD or any other mental health condition that existed in service. There is insufficient evidence to attribute his misconduct to any mental health condition or 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 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 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 claimed mental health issues, your advanced age, 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 command. Further, the Board also considered 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. In making this finding, the Board also considered that you provided no evidence, other than your statement, in support of your application. Finally, the Board noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations, disability ratings, and/or discharge classifications are not binding on the Department of the Navy and have no bearing on previous active duty service discharge characterizations.

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,

4/27/2026

