



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

██████████
Docket No. 11769-25
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.

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 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 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, 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 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 15 August 2005.
2. On 26 January 2007, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 92 (disobeying a lawful order by wrongfully

consuming alcohol while under the legal drinking age prescribed). You were awarded punishment of reduction in rank to E-2, forfeiture of \$729 pay per month for two months, 45 days of restriction, and 45 days of extra duty. In addition, you were counseled regarding your misconduct and cautioned that continued misconduct may result in administrative separation processing.

3. On 8 August 2007, you received a second NJP for violation of UCMJ, Article 92 (consuming alcohol while under the legal drinking age prescribed) and Article 111 (operating a motor vehicle while impaired with a blood alcohol content (BAC) level of 0.15. You were awarded punishment of reduction in rank to E-1, forfeiture of \$650 pay per month for two months, 45 days of restriction, and 45 days of extra duty. You were again counseled for your conduct and cautioned on the potential consequences of continuing to commit misconduct.

4. On 4 May 2009, you received a third NJP for violation of UCMJ, Article 111 (operating a motor vehicle while under the influence of alcohol with a BAC of 0.18. You were awarded punishment of reduction in rank to E-2, forfeiture of \$784 pay per month for two months, 45 days of extra duty, and 45 days of restriction.

5. On 13 August 2009, you were notified that administrative separation proceedings had been initiated against you on the basis of misconduct due to a pattern of misconduct with Other Than Honorable (OTH) as the least possible characterization of service upon discharge.

6. You elected to appear before an Administrative Discharge Board (ADB) and the ADB hearing convened on 18 September 2009. The ADB, by majority vote, found you committed misconduct and recommended that you be separated from military service with an OTH discharge characterization of service.

7. On 23 October 2009, you received a separation physical prior to your discharge from active duty. In the Report of Medical History (DD Form 2807-1), you indicated in Block 14c that you were "currently in good health." In the Report of Medical Assessment (DD Form 2697), Block 13, you replied negatively when asked if you had suffered from any injury or illness while on active duty for which you did not seek medical care. You further indicated in Block 17 that you did not have any other questions or concerns about your help.

8. Ultimately, on 30 October 2009, you were discharged from the Marine Corps with an OTH characterization of service and a reentry code of RE-4.

In your application to the Board, you request that your discharge be evaluated and that you be granted an upgrade to your characterization of service. You contend that:

1. You were suffering from undiagnosed and untreated mental health issues and were not provided with a mental health evaluation before your discharge. You believe this was a critical oversight.

2. With proper support and intervention, you believe the outcome might have been different.

3. You take full responsibility for your actions. Despite your issues, you made a determined effort to uphold the core values of the Marine Corps.

4. There are certain aspects of your Marine Corps service which brings you pride and you believe your consistent efforts throughout your service do not support your OTH.

5. You continue to struggle with addiction and the negative effects of your discharge continue to impact your life. However, you continue your redemption efforts.

6. You desperately need access to veterans' benefits.

7. Others with less service time are afforded more benefits than you because of your OTH characterization of 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 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 administrative separation and no error exists with your record.

However, because you raised the issue of mental health, the Board applied liberal consideration to your claim of having had undiagnosed and untreated mental health issues at the time of your military service, and to the effect that these conditions 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 to conclude that you were diagnosed with or suffered from a mental health condition while in service. The Board noted that you did not submit any medical evidence to support your claim and chose not to respond to the Board's request for supporting evidence of your claim. The Board also noted that during your separation physical on 23 October 2009, you reported being in good health and you did not raise concerns or questions about symptoms that may have indicated a mental health condition. Thus, the Board found that you did not provide sufficient evidence or information to support your contention that you were suffering from undiagnosed and untreated mental health challenges while in the Marine Corps. 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 claimed mental health condition and its potential effect upon your conduct in accordance with the Kurta Memo, 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, your desire for an upgrade to your characterization of service, the totality of your service, 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 candor and remorse, your addiction 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, as documented in the three NJPs, far outweighed all of the mitigating factors combined. In particular, the Board determined that operating a vehicle while intoxicated is contrary to military core values and policy, and poses an unnecessary risk to the safety of others. Further, the Board found that your conduct showed a complete disregard for military authority and regulations. The Board observed you were given an opportunity to correct your conduct deficiencies after your first two NJPs 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. 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. 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. While the Board acknowledged the personal difficulties you continue to endure and your desire for veterans' benefits, 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 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

