



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

██████████
Docket No. 489-26
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 30 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 26 July 2004.
2. On 12 April 2005, you received nonjudicial punishment (NJP) for violating Uniform

Code of Military Justice (UCMJ), Article 92 (failure to obey a lawful order by wrongfully consuming alcohol while under the legal drinking age), and Article 92 (disobeying a lawful order to remain aboard base until Monday). You received punishment of reduction in rank, forfeiture of \$692 pay per month for two months, restriction for 45 days, and extra duty for 45 days.

3. On 14 December 2005, you received a second NJP for violating UCMJ Article 91 (insubordinate conduct in that did receive a lawful order from an NCO to pick up a broken chair did willfully disobey the same), Article 91 (insubordinate conduct in that was disrespectful in language and deportment to Sgt by saying “No” and using profanity), and Article 92 (disobeying an order by consuming alcoholic beverage under the legal drinking age of 21). You received punishment of reduction in rank to Private, forfeiture of \$500 pay per month for two months, restriction for 45 days, and extra duty for 45 days.

4. On 16 March 2006, you were found guilty at Summary Court Martial proceedings of violating UCMJ Article 91 (treating ██████████ with contempt and/or were disrespectful to ██████████), Article 108 (willfully damaging military property of the US government in the amount of \$106), Article 134 (six specifications: (1) breaking restriction by drinking alcohol while on restriction; (2) break restriction by showing up for Substance Abuse Counseling with the smell of alcohol coming off your body); and (3) breaking restriction by going off base with Private Sanchez); (4) underage drinking; (5) underage drinking; and (6) underage drinking). The Summary Court Martial sentenced you to confinement for 30 days and forfeiture of \$848 pay per month for one month.

5. On 27 July 2006, you were placed in an early intervention alcohol rehabilitation plan.

6. On 2 February 2007, you received a third NJP for violating UCMJ Article 111 (drunken or reckless operation of a vehicle by physically controlling a vehicle while impaired by alcohol). You received punishment of reduction in rank to Private, forfeiture of \$650 pay per month for two months, restriction for 45 days, and extra duty for 45 days.

7. On 5 March 2007, you were notified that administrative separation proceedings had been initiated against you on the basis of alcohol abuse rehabilitation failure and misconduct due to a pattern of misconduct. You acknowledged your rights and waived your right to consult with counsel and appear before an administrative separation board.

8. Ultimately, on 24 April 2007, you were discharged from the Marine Corps on the basis of Misconduct and received an Other Than Honorable (OTH) characterization of service and a reentry code of RE-4.

In your application for correction, you ask for an upgrade to your characterization of service to improve access to Veterans Affairs healthcare benefits and disability compensation, as well as gaining better employment opportunities which are often denied with less than honorable discharges.

After careful review, the Board reached the following conclusions and denied your application for relief.

The Board initially concluded you were appropriately processed for discharge based on your misconduct which is documented in your service record by your three NJPs and Summary Court Martial conviction. The Board noted you do not contest committing the misconduct which led to your Other than Honorable discharge. Therefore, the Board determined the presumption of regularity applies to the finding that you committed the misconduct that formed the basis of your discharge from active duty and no error exists with your OTH characterization of service.

However, because you raised the issue of mental health, the Board applied liberal consideration to your claim of mental health as an issue, and to the effect that this condition/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 insufficient evidence to conclude that you may have developed or suffered from an unspecified mental health condition during your naval service. This conclusion is supported by the fact you provided no medical evidence in support of your claim and chose not to respond to the Board's request for supporting evidence. Additionally, again applying liberal consideration, the Board found insufficient evidence to conclude the misconduct for which you were discharged was excused or mitigated by an unspecified mental health condition or other mental health experience. 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, the totality of your service to include service highlights, your relative youth and immaturity at the time of your misconduct, your desire for veterans' benefits, 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 your three NJPs and Summary Court Martial conviction, was not overcome by information you provided in your application. The Board found that your conduct of persistent insubordination and failure to obey lawful orders was contrary to military core values and policy, and a complete disregard for military authority and regulations. Furthermore, the Board found that your operation of a vehicle while impaired by alcohol endangered others unnecessarily. 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, 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 possible need for benefits, they determined the severity of your misconduct outweighed any mitigation resulting from that factor.

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,

4/3/2026

[REDACTED]

Executive Director

Signed by: [REDACTED]