



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No: 5391-20

Ref: Signature Date

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Dear █

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 limitations was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 21 May 2021. 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, an Advisory Opinion (AO) from a qualified mental health provider and your attorney's AO rebuttal, and applicable statutes, regulations, and policies, to include the 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 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.

You originally enlisted in the Marine Corps on 1 June 2015. Your pre-enlistment physical on 23 May 2014 and self-reported medical history noted no neurologic or psychiatric conditions or symptoms.

On 20 November 2015 your command issued a “Page 11” counseling warning (Page 11) documenting that you made a statement to the Company First Sergeant that you were having suicidal and homicidal thoughts, and that you would hurt yourself or others if you did not get medication for the undiagnosed depression you were experiencing. The Page 11 noted that on 3 November 2015 you were making passive suicidal ideations that did not merit hospitalization and you were returned to full duty. The Page 11 also noted that you altered a medical document to put yourself on light duty while you were in a receiving status in the Marine Awaiting Platoon. The Page 11 expressly warned you that a failure to take corrective action and any further Uniform Code of Military Justice (USMJ) violations or incidents requiring formal counseling might result in judicial action or adverse administrative action, including an administrative separation. You did not make a Page 11 rebuttal statement.

On 23 November 2015 your command issued you a second Page 11 warning following your documented adjustment disorder diagnosis that interfered with your duties to complete MOS training. The Page 11 also directed you to not be around or exposed to weapons at any time. You were again warned that a failure to take corrective action and any further violations of the UCMJ, disciplinary action, or incidents requiring formal counseling may result in judicial or adverse administrative action, including but not limited to administrative separation. You did not make a Page 11 rebuttal statement.

Between 2 December 2015 and 10 February 2016 your command issued you four separate Page 11 entries not recommending you for promotion to Private First Class. The Page 11 entries noted that suicidal and homicidal ideation, a lack of maturity, a lack of leadership, a mental health recommendation for your administrative separation, a lack of initiative, and a lack of MOS credibility were the reasons for your non-recommendation. You did not make rebuttal statements to any of the Page 11 entries.

On 10 February 2016 your command initiated administrative discharge action by reason of convenience of the government, specifically, due to a condition not a disability. You waived your rights to consult with counsel, but included the following written statement for consideration:

I do not desire to remain in the Marine Corps at this time for the following reasons: Due to my medical condition I am unable to be a productive Marine. These medical conditions make this environment unbearable.

Your Company Commander on 12 February 2016 recommended that you be administratively separated with a general (under honorable conditions) characterization of service. He specifically stated:

Private █ performance has adversely affected others in the unit. His condition and mental capacity has interfered with his effective performance of duty and since has been referred to appropriate medical authority. Medical authority has confirmed that the Marine is suffering from a mental condition

beyond the individual's control that indicates the condition is not a disability, and subsequently has requested that the command initiate the separation proceedings. Furthermore, it is has been indicated by convening medical authority that Private ██████████ will not respond to command efforts in his rehabilitation or any treatment given in the military. Private ██████████ inability to perform his duties as a result of his mental limitations creates a severe liability on the unit and places an overwhelming burden on the entire chain of command. Retention of this Marine would adversely affect the morale, discipline, readiness and military.

On 16 February 2016 your Commanding Officer recommended your administrative separation with an honorable characterization of service. He stated:

Private ██████████ was evaluated by the ██████████ Army Community Hospital's (██████████ Behavioral Medicine Division (BMD) on 20 November 2015 with an initial evaluation of Adjustment Disorder when adapting to military service. He was counseled and returned to training and then on 01 February 2016 was again seen and re-evaluated by ██████████ BMD and diagnosed with continued Adjustment Disorder with depressed mood and suicidal ideations which seem to be worsened by military environment. The medical practitioners...state that Private ██████████ problems will continue while in military service and recommend he be removed from all training and be processed for administrative separation. It is not believed that Private ██████████ will respond to command efforts at rehabilitation or any behavioral health treatment methods currently available in the military...This command has given Private ██████████ the opportunity to correct his deficiencies and up to this point he has had no infractions of the UCMJ. He has been non-recommended for promotion on multiple occasions due to his inability to handle any responsibilities and can handle no stressful situations. Due to Private ██████████ not being able to function at all in a military environment, requirements for constant supervision, and based on the seriousness of the diagnosis, I concur with the ██████████ BMD and recommend that he be separated from the U.S. Marine Corps with a[n] honorable characterization of service.

Ultimately, on 22 February 2016 you were discharged from the Marine Corps for a condition (not a disability) with an "Honorable" characterization of service and assigned an RE-4 reentry code. In this regard, you were assigned the correct characterization, narrative reason, and reentry code based on your factual situation.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 2 March 2021. The Ph.D. initially observed that your active duty records revealed two outpatient counseling appointments in October and November 2015, and that you underwent two suicide risk assessments (November 2015 and January 2016) and approximately seven sessions of psychiatric therapy. The Ph.D. observed that although minimal clinical notes were provided,

the note dated 19 January 2016, included a positive depression screen and elaborated that you reported “feeling depressed” after your father became ill and you had “intermittent feelings of needing to hurt himself...” The Ph.D. initially noted that your in-service records did contain a mental health diagnosis and psychological/behavioral changes leading to two mental health evaluations and an adjustment disorder diagnosis for which you received treatment. The Ph.D. determined that you did not present any information or evidence suggesting your active duty mental health diagnosis was erroneous. The Ph.D. also determined that no clinical evidence was presented indicating your command erred in assigning you an RE-4 reentry code. The Ph.D. concluded by opining that there was sufficient direct evidence you exhibited behaviors associated with a mental health condition on active duty, and that the command’s decision to discharge you with an RE-4 reentry code was appropriate.

The Board carefully considered all potentially mitigating factors as outlined in your petition and in your attorney’s brief with enclosures to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to your contentions that: (a) you were the victim of a misdiagnosis of an adjustment disorder; (b) adjustment disorder is a temporary condition and you were not given an opportunity to rehabilitate yourself or adjust to the Marine Corps lifestyle; (c) your command had a duty to assist you with adjusting but instead isolated you and put your status into limbo further frustrating you; (d) a convenience of the government discharge receives an RE-3 reentry code and not an RE-4; (e) RE-4 codes are reserved for misconduct cases; (f) your command’s actions towards you following your adjustment disorder diagnosis were inconsistent with USMC order; (g) the lack of support you received from your instructors and fellow Marines directly resulted in your adjustment disorder diagnosis and discharge; (h) it was an error and unjust to have separated you with a temporary condition that normally resolves itself in less than six months; and (i) the reentry code was erroneous and prohibits you from further military service. However, given the totality of the circumstances, the Board determined that your request does not merit relief.

In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board determined that your Marine Corps service records and DD Form 214 maintained by the Department of the Navy (DoN) contain no known errors. Upon your separation you were assigned an RE-4 reentry code and narrative reason for separation of “condition, not a disability.” In this regard, you were assigned the correct reentry code and narrative reason for separation based on your precise factual situation. The Board observed that in the Marine Corps, the RE-3P reentry code means “failure to meet physical/medical standards,” and is also used in cases involving conditions (not amounting to a physical disability) which interfere with the performance of duty, absent any evidence to the contrary. However, the Board determined that it was within your command’s discretion and entirely appropriate to alternatively assign you an RE-4 code based on your specific and unique factual circumstances. The Board also unequivocally concluded that your attorney’s suggestion that military mental health care providers are willing to cooperate and essentially conspire with commander to rid themselves of undesirable service members was unsupported by the facts in the record.

Additionally, absent a material error or injustice, the Board generally will not summarily make corrections to service records solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. Even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that given the totality of the circumstances your request does not merit relief. Accordingly, the Board determined that there was no impropriety or inequity in your discharge. The Board concluded you received the correct reentry code and narrative reason for separation based on the totality of your circumstances, and that such discharge action was in accordance with all DoN directives and policy at the time of your separation.

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,

5/26/2021

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Executive Director

Signed by: █