



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: 1006-21

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 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 16 July 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, 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider.

You enlisted in the Marine Corps on 30 November 1998. Your pre-enlistment physical examination on 29 July 1998 and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On your pre-enlistment documentation you admitted pre-service marijuana use.

On 15 November 1999 you received a "Page 11" counseling warning (Page 11) for a lack of good judgment. Specifically, you failed to use the buddy system on liberty overseas, allowed

your buddy to enter a nightclub unaccompanied for several hours and later allowed him to drive a car under the influence of alcohol, for which he received a DUI from base security and Icelandic Police. You did not make a Page 11 rebuttal statement.

On 18 November 1999 you received non-judicial punishment (NJP) for the violation of a lawful written order for drinking underage, assaulting a fellow Marine and being incapacitated for duty due to the wrongful prior indulgence of alcohol. You did not appeal your NJP. On 19 November 1999 you received a Page 11 counseling warning documenting your NJP. The Page 11 warned you that a failure to take corrective action may result in administrative separation, administrative reduction, limitations on future service, and/or judicial proceedings. You did not make a Page 11 rebuttal statement.

On 8 November 2000 you commenced a period of unauthorized absence (UA) that terminated after thirty-one days on 9 December 2000. On 4 January 2001 you received NJP for your thirty-one day UA. You did not appeal your NJP.

On or about 1 August 2001 you suffered an in-service trauma when you were in close proximity to a lightning strike that killed one Marine and caused numerous issues for you. On 3 June 2002 you received a Page 11 counseling warning for failing your physical fitness test (PFT). Specifically, you failed to complete the minimum amount of required pull-ups and failed the run portion of the PFT. The Page 11 warned you that a failure to take corrective action may result in administrative separation or judicial proceedings. You did not make a Page 11 rebuttal statement.

On 24 July 2002 you commenced a period of UA that terminated after two days on 26 July 2002. While in a UA status, you missed the movement of your unit. On 21 August 2002 you received a Page 11 warning for: (a) being a two-time weight failure and showing no effort in correcting yourself, (b) a PFT failure with a score of 129, and (c) multiple NJPs for disciplinary action. On the Page 11 you also acknowledged you were being processed for administrative separation.

On 20 September 2002 you were convicted at a Summary Court-Martial (SCM) for your two-day UA and for missing movement on 26 July 2002. As punishment you received a reduction in rank to Private First Class (E-2), and both restriction and extra duties for thirty days.

Ultimately, on 1 January 2003 at the end of your required active service, you were discharged from the Marine Corps with a general (under honorable conditions) (GEN) characterization of service and assigned an RE-4 reentry code. On 22 October 2020 the VA granted you a service-connection for PTSD and rated you with a 70% disability.

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 28 June 2021. The Ph.D. initially observed that you described an in-service trauma of being in close proximity to a lightning strike in August of 2001 and that provided in-service medical records to corroborate your description. The Ph.D. also observed that you provided part

of your post-service VA treatment records that focused on your mental health treatment for PTSD linked to the lightning strike. The Ph.D. determined that you exhibited some behaviors indicative of a mental health condition that would mitigate some, but not all of your misconduct. Specifically, the Ph.D. concluded that your misconduct prior to the purported trauma in August 2001 would not be mitigated by mental health conditions/symptoms. The Ph.D. concluded by opining that available objective evidence indicated that you exhibited behaviors associated with a mental health condition on active duty and that some of your misconduct may be mitigated by your mental health condition.

The Board carefully considered all potentially mitigating factors 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 completed your full four-year enlistment and had non-diagnosed medical issues that resulted in lower pro/con marks; (b) you were convicted at a SCM that resulted in lower pro/con marks; (c) the incident leading to the SCM was due to your PTSD trigger event; (d) the lower pro/con marks lowered your discharge to a GEN; (e) the GEN discharge forfeited your GI Bill eligibility; (f) you were diagnosed with hypo-thyroidism after service and the VA granted a service-connection; and (g) you are still seeing a mental health professional due to suicidal ideation and other issues. 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 concluded that there was no nexus between PTSD and/or related symptoms and your most serious misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions were related to or mitigated the most serious misconduct forming the basis of your discharge. As a result, the Board concluded that the misconduct occurring prior to August 2001 was not due to mental health-related conditions or symptoms. The Board determined the record clearly reflected that your misconduct prior to August 2001 was intentional and demonstrated you were unfit for further service. The Board also concluded that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions.

Additionally, the Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average was 3.60 in conduct. Marine Corps regulations in place at the time of your discharge required a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career reflected your aggregate misconduct over your entire enlistment which further justified your GEN characterization of discharge. The Board found that even if your pro/con marks after August 2001 were mitigated by mental health conditions, the overall trait average of 3.60 is still reflective of your entire enlistment given the seriousness of your pre-triggering event misconduct.

The Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade and determined that Marines should receive no higher discharge characterization than is due. Lastly, absent a material error or injustice, the Board generally will not summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. The Board carefully considered any matters submitted regarding your post-service conduct and accomplishments. However, 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, and even under the liberal consideration standard, the Board concluded that your misconduct clearly merited your receipt of a GEN.

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,

8/9/2021

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Executive Director

Signed by: █