



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: 1255-21

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 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 application on its merits. A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 3 September 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), and the relevant Advisory Opinion and your response to the Advisory Opinion.

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.

Your available record indicates that you served in the United States Army from 5 October 1990 until 25 September 1995, when you were discharged on the basis of misconduct with a general characterization of service. You subsequently enlisted in the Marine Corps and began a period




of active duty on 6 February 1996. On 4 June 1999, you were found guilty at general court martial proceedings for violating the Uniform Code of Military Justice Article 92 (willfully failing to patrol your area of responsibility); Article 128 (unlawfully striking a female by placing her wrists into hand irons behind her back); and Article 134 (willfully and wrongfully seizing, carrying away and hold a female, a person not a minor, against her will). The Court sentenced you to forfeiture of all pay and allowances, reduction in rank to E-1, confinement for three years, and a bad conduct discharge (BCD). On 21 December 2000, President, Naval Clemency and Parole Board notified you that clemency was not granted and your request for restoration was denied. The Navy-Marine Corps Appellate Review Activity denied your Petition for Grant of Review. On 17 January 2006, you were discharged from the Marine Corps on the basis of Court Martial, and received a bad conduct discharge and a reentry (RE) code of RE-4.

In your application to the Board, you request an upgrade to your bad conduct discharge. You state that upon your release from the military, you have constantly tried to better yourself and your position. You note that you were prior service and state you were diagnosed with several disabilities to include Post Traumatic Stress Disorder (PTSD). You assert that you were unaware of your PTSD diagnosis until you began seeing doctors at the Department of Veterans Affairs (VA). You state that you are currently enrolled in the Veterans Readiness and Employment program that has allowed you to pursue a bachelor's degree in cybersecurity. You request an upgrade so that you can continue working without being hindered by your current discharge and so that you can apply for specific employment positions. You provide the Board a copy of your VA Benefits Letter, and contend that all of your records are available online through vets.gov. The VA has granted you a 70% disability rating for service-connected PTSD.

As part of the review process, a qualified Medical Advisor reviewed your request and issued an Advisory Opinion dated 9 August 2021. The Advisory Opinion considered the information that you provided and noted that your in-service records did not contain evidence of a mental health condition or psychological/behavioral changes which may have indicated a mental health condition. Additionally, throughout your extensive legal and disciplinary process, there were no concerns cited that resulted in a referral to mental health resources. The Advisory Opinion noted your VA service-connected disability compensation but found that there is not a clear nexus between your post-discharge diagnoses and your severe in-service misconduct. The Advisory Opinion concluded that even in consideration of your post-discharge PTSD diagnosis, the evidence failed to establish a link between your post-discharge diagnoses and your in-service misconduct, or to establish your mental health conditions could be considered as mitigation of your in-service criminal misconduct. The Advisory Opinion was provided to you, and you submitted a response in which you stated in part that as a Marine, you have taken an active role in understanding PTSD and how it affected your wife and family over the past 20 years. Your response was reviewed by the Medical Advisor who concluded that you did not provide any new or material clinical evidence in support of your petition and therefore the Advisory Opinion stands as written.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to your ongoing efforts to improve yourself and your situation



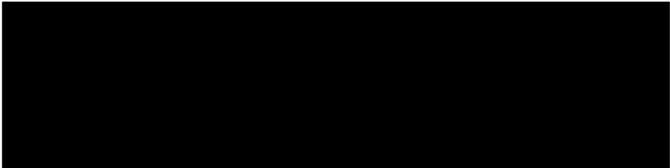


following your discharge, your experiences in the Army as described in the information you provided with your application, and your Proficiency and Conduct Marks of 4.6/4.7 at the time of your separation from the Marine Corps. The Board noted that you state that all of your records are available through vets.gov/E benefits; the Board does not have access to these records and is not an investigative body. If you wished to have information from vets.gov considered by the Board, it should have been provided by you with your application.

The Board and the Advisory Opinion both considered the information you submitted with your application as well as the information in your available service record, taking into account your contention that you suffered from PTSD while you were in the Marine Corps and that your mental health condition may have mitigated your misconduct. The Board reviewed the analysis and determinations of the Advisory Opinion as well as your response, and substantively concurred with the Advisory Opinion's conclusion that the evidence provided did not establish a nexus between your post-discharge diagnoses and your in-service misconduct, nor did it establish your mental health conditions could be considered as mitigation of your in-service criminal misconduct. The Board found that given the seriousness of the crimes for which you were found guilty of at general court martial, that the bad conduct discharge was issued without error or injustice. Even in consideration of your prior Army service, your positive contributions to the Marine Corps apart from your court martial conviction, your service-connected rating for PTSD from the VA, and your post-discharge efforts and achievements, the Board determined that an upgrade to your characterization of service is not warranted.

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,



Executive Director

