



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

█
Docket No: 2175-21
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 10 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.

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 enlisted in the Marine Corps and began a period of active duty on 5 September 2001. On 1 October 2001, you receive nonjudicial punishment (NJP) for wrongful use of marijuana. Administrative Remarks reflect that on 1 May 2002, you were counseled concerning illegal drug involvement, failing a urinalysis for marijuana. On 25 June 2002, you began a period of

[REDACTED]

unauthorized absence (UA) that terminated when you returned by surrender on 8 September 2003. On 17 September 2003, you received NJP for the period of UA from 25 June 2002 through 8 September 2003 and for wrongful use of marijuana in May 2002. On 6 November 2003, you were notified of administrative separation proceedings against you; you originally requested a hearing before an administrative separation board. Your record reflects that you later waived your right to appear before an administrative separation board. On 19 November 2003, Commanding Officer, [REDACTED] recommended that you be administratively discharged with an other than honorable characterization of service. On 18 December 2003, you confirmed your waiver of a right to appear before an administrative separation board by signature. On 23 February 2004, you were discharged on the basis of misconduct and received an other than honorable characterization of service and a reentry (RE) code of RE-4B.

In your application for correction, you request an upgrade from an other than honorable discharge to a general characterization of service. You state that you were a good and faithful Marine who served during combat through deployment. You provide statement from several Marines with whom you served in which they detail your service together (including your former Commanding Officer, and another Marine who detailed your service together from [REDACTED] to [REDACTED] to your assignment to [REDACTED] Company in November 2000, and to your deployment to [REDACTED] together in 2001 for seven months of overseas duty). Among other issues, the statements note that everyone's experience in [REDACTED] was different but that there was constant stress, minimal food and water, and limited sleep. In your application to the Board, you contend that after you returned from deployment, you started having mental issues and began to self medicate. You claim that you were not aware that you were having symptoms of Post Traumatic Stress Disorder (PTSD) and request an upgrade to a general characterization of service to be able to access care through Veterans Affairs.

As part of the review process, a Physician Advisor reviewed your request and issued an Advisory Opinion dated 31 July 2021. The Advisory Opinion considered that your in-service records contained a diagnosis of Cannabis Dependence with a recommendation for treatment and process but that there were no in-service records reflecting a diagnosis of PTSD, an unfitting mental health condition, or psychological/behavioral changes that may have indicated PTSD or an unfitting mental health condition. The Advisory Opinion noted that although you claimed PTSD, you did not provide any description of specific traumatic events with subsequent symptoms that would meet the criteria for PTSD or indicate how those symptoms interfered with your ability to function. The Advisory Opinion concluded that based on the available evidence, the preponderance of available objective evidence failed to establish that you experienced PTSD or other unfitting mental health condition at the time of your service that may have mitigated your in-service misconduct. The Advisory Opinion was provided to you, and you were given 30 days in which to submit a response. When you did not provide a response within the 30-day timeframe, your case was submitted to the Board for consideration.

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 the statements you provided in support of your application, your contention that you were suffering from a mental health condition that may have mitigated

[REDACTED]

your in-service misconduct, and your assertion that you were a good Marine apart from the misconduct. The Board noted that your Average Marks in Enlistment at the time of your discharge were 3.7/3.1. Additionally, the Board noted that although your Certificate of Release or Discharge from Active Duty (DD Form 214) does not reflect foreign service, it does reflect 7 months and 27 days of sea service. The Board also reviewed that your ribbons and decorations include an NDSM, Sea Service Deployment Ribbon, and Rifle Qualification Badge (Sharpshooter). The Board reviewed the analysis and conclusions of the Advisory Opinion, and substantively concurred with its determination. Even in consideration of your personal statement, the letters of support and the information reflected in your record, the Board found insufficient evidence on which to make a determination that you suffered a mental health condition while you were in the Marine Corps that may have mitigated your misconduct. The Board concluded that the length of your UA from June 2002 to September 2003, coupled with your wrongful use of marijuana while on active duty, supported your other than honorable characterization of service. The Board determined that your discharge was issued without error or injustice and that corrective action 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,

10/17/2021

[REDACTED]

Executive Director

[REDACTED]