



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: 2252-21
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 18 October 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 considered the advisory opinion (AO) furnished by qualified mental health provider dated 9 August 2021, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

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 Reserves on 8 July 1990. Thereafter, based on the information contained in your record, you accumulated a total of 24 unexcused absences from Inactive Duty

Training. Subsequently, on 1 October 1991, you were notified via certified mail of your commanding officer's (CO) intent to process you for administrative separation by reason of unsatisfactory performance in the Selected Marine Corps Reserves (SMCR). This notification advised that if separation was approved, the least favorable characterization of service authorized in your case would be other than honorable (OTH). The notification further advised you of your right to consult with counsel. However, you failed to respond to the notification, thus, waiving your procedural right to present your case before an administrative discharge board. As such, the separation authority directed your administrative separation from the SMCR with an OTH characterization of service and assigned an RE-4 reenlistment code. On 18 March 1992, you were discharged with an OTH.

As part of the Board's review, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO regarding your assertion that you are dealing with Post-Traumatic Stress Disorder (PTSD) and this diagnosis might have mitigated the misconduct that led to you receiving an OTH. The AO noted your in-service records revealed enlistment and discharge physical examinations without mental or substance abuse issues, nor did it contain evidence of a diagnosis of a mental health condition or psychological/behavioral changes, which may have indicated a mental health condition. The AO opined that based on the available evidence, the preponderance of objective evidence failed to establish you suffered from PTSD at the time of your military service, was diagnosed with PTSD, or that your in-service misconduct could be attributed to PTSD or other mental health conditions.

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 desire to upgrade your discharge and to be reinstated to the rank of Lance Corporal based on your contentions that you were dealing with PTSD as a result of interactions with a fellow Marine during deployment who actively promoted white supremacy to create division within the unit and intimidate people of color. You also contend that after seeking help for your emotional response and depression due to the aforementioned, you were told not to return by your senior enlisted leadership. The Board noted you did submit a character letter from your platoon commander who served with you while in Saudi Arabia and Kuwait during the Persian Gulf War. However, the board also noted you did not submit post-service documents to be considered for clemency purposes. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct outweighed these mitigating factors. Additionally, the Board concurred with the AO. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon the 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,

10/26/2021

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Executive Director

Signed by █