



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: 2844-21

Ref: Signature Date

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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 8 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 also considered advisory opinion (AO) furnished by a qualified mental health provider. You were afforded an opportunity to submit an AO rebuttal, and you did do so.

You enlisted in the Marine Corps 16 September 2008. Your pre-enlistment physical examination on 26 March 2008 and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 29 June 2009 you received a "Page 11" counseling sheet (Page 11) noting your deficiencies of unauthorized absence (UA). The Page 11 warned you that a failure to take corrective action may result in administrative separation, limitation of further service, or disciplinary action. You did not make a Page 11 rebuttal statement.

On 12 February 2010 you received non-judicial punishment (NJP) for two separate specifications of failing to obey a lawful order. You did not appeal your NJP. On the same day you received a Page 11 documenting your NJP and warning you that a failure to take corrective action may result in judicial or adverse administrative action, including administrative separation. You did not make a Page 11 rebuttal statement. On 13 September 2010 you received a Page 11 for violating a lawful order with the same corrective action warning as your second Page 11. You did not make a Page 11 rebuttal statement.

On 10 May 2011 you received NJP for UA and for: (a) seven specifications of failing to obey a lawful order; (b) four specifications of UA; (c) insubordinate conduct; and (d) false official statement. You did not appeal your NJP. On the same day you received a Page 11 documenting your NJP and acknowledging that you were going to be administratively separated. You did not make a Page 11 rebuttal statement.

On 27 May 2011 you received NJP for: (a) failing to obey a lawful order; (b) two specifications of UA; (c) two specifications of willful disobedience of a superior commissioned officer; and (d) loss/destruction of government property. You did not appeal your NJP. On 3 June 2011 you received a Page 11 wherein you acknowledged that you were going to be administratively separated. You did not make a Page 11 rebuttal statement.

On 22 June 2011 you were notified that you were being processed for an administrative discharge by reason of misconduct due to a pattern of misconduct, and misconduct due to the commission of a serious offense. You consulted with military counsel and elected to request an administrative separation board (Adsep Board).

On 17 August 2011 an Adsep Board convened in your case. Following the presentation of evidence and witness testimony, the Adsep Board members unanimously determined that you committed the misconduct as charged. Subsequent to the misconduct finding, the Adsep Board members unanimously recommended that you be separated from the Marine Corps with a general (under honorable conditions) (GEN) characterization of service. In the interim you underwent a PTSD screening and the Medical Officer confirmed that you did not have PTSD. Ultimately, on 17 October 2011 you were separated from the Marine Corps for a pattern of misconduct with a GEN discharge characterization and assigned an RE-4 reentry code.

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 25 July 2021. The Ph.D. initially observed that you provided clinical notes from the VA which confirmed a post-service diagnosis of schizophrenia and other related disorder with a history of schizoaffective disorder. The Ph.D. also observed that you provided documentation you are service-connected with the VA rated at 100%, but the documentation provided does not indicate the condition(s) for which you are service-connected. The Ph.D. determined that your in-service records did contain evidence of a mental health diagnosis, but noted that information regarding the in-service diagnosis was not presented. The Ph.D. also noted that you did not indicate what your in-service was, or provide a description of your symptoms while on active

duty. The Ph.D. concluded by opining that although you although received mental health services on active duty and carry a post-service diagnosis, the preponderance of available objective evidence failed to establish your active duty misconduct could be mitigated by a 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: (a) you believe you performed your assigned duties well and faithfully executed the mission; (b) you are currently 100% service-connected for schizoaffective disorder; and (c) at the time of your discharge you were initially misdiagnosed and since then have been further evaluated and diagnosed with schizoaffective disorder. 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 any mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. The Board also concluded that although you have post-discharge schizoaffective and other related disorder diagnoses, active duty records contemporaneous to your service lacked sufficient evidence to establish a nexus between your mental health conditions/symptoms and your in-service misconduct. As a result, even under the liberal consideration standard the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record clearly reflected that your misconduct was willful and 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.

The Board was aware 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 3.70 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 were a direct result of your pattern of serious misconduct which justified your GEN characterization of discharge. The Board further 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. The Board determined that characterization under GEN or other than honorable (OTH)

conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. Lastly, absent a material error or injustice, the Board declined to 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 character, 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 pattern of serious 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,

10/22/2021

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Executive Director

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