



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

█
Docket No: 4104-21
Ref: Signature Date



Dear █:

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 the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 November 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), the 24 February 2016 supplemental guidance from the Principal Deputy Undersecretary of Defense regarding discharge upgrade requests by Veterans claiming PTSD or Traumatic Brain Injury (TBI) (Carson 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 a 19 September 2021 advisory opinion (AO) furnished by a qualified mental health provider, your rebuttal to the AO dated 23 October 21, as well the response of the AO dated 31 October 2021.

You enlisted in the Marine Corps Reserve on 20 December 1976. On 10 May 1977, your status changed to active duty, and you commenced an enlistment, which you completed honorably on

22 May 1980, whereupon you immediately reenlisted, commencing a new enlistment in the Marine Corps on 23 May 1980. You served without apparent incident until 18 April 1984, when you received a formal written warning concerning checks that you passed to the Navy Exchange that were returned due to insufficient funds. On 22 October 1984, you received another formal written warning concerning your failure to comply with a squadron order concerning the cleaning of your weapon after firing it at the range. Also on 22 October 1984, you received another formal written warning concerning checks that you passed to the Marine Corps Exchange that were returned due to insufficient funds. On 20 December 1984, you were convicted by a special court-martial for being absent from your appointed place of duty, for being derelict in your duties, for wrongfully appropriating a television from the Navy Exchange rental facility on two occasions, and for possessing an expired identification card. On 18 February 1985, you received a formal written warning concerning your belligerent attitude and another written warning concerning your inability to manage your finances due to checks that you passed to the Defense Commissary that were returned due to insufficient funds. Thereafter, your command began to evaluate your separation from the Marine Corps, and in the process of its evaluation, it noted that you were the subject of eight arrest warrants for traffic violations and failures to appear in █. On 4 March 1985, you were notified of the initiation of separation processing due to a pattern of misconduct. After consulting with counsel, you determined that you would waive your right to an administrative board. On 11 March 1985, the discharge authority directed that you be discharged with an other than honorable characterization of service. On 28 March 1985, you were permanently decertified from the Personnel Reliability Program, and on 29 March 1985, you were discharged with an other than honorable characterization of service.

The Board carefully considered all potentially mitigating factors in your petition to determine whether the interests of justice warrant relief in your case including in accordance with the Wilkie Memo. You contend in your petition that you suffered from PTSD as a result of racial stressors and a mental health condition that was incurred during your active duty service, which you believe might have mitigated the misconduct that led to your other than honorable characterization of service. You further contend that, in the absence of your mental health conditions, you would have received a better discharge characterization. In particular, you contend that, when you enlisted in the Marine Corps in 1976, there was a rampant KKK movement among enlisted personnel, which you state has been acknowledged by both the Marine Corps and the Department of Defense. In support of your contention, you state that within and surrounding the area of █, the KKK openly posted and distributed posters stating, "White Man Awake," and, in one instance, members of the KKK burned the car of a black officer, and in another instance, a black female Marine was stabbed 38 times and killed at █ based on racial reasons. You further state that you were singled out for physical abuse. In addition, you describe your laudable post-service conduct, which includes your assertion that, while you were experiencing homelessness for a period of approximately 12 years, you began singing in a park with other veterans who were experiencing homelessness, with whom you eventually started a choir, which has grown in popularity and has been featured on America's Got Talent. Your choir raises awareness for veterans experiencing homelessness, and you submitted a letter from the choir co-founder in support.

In connection with your assertion that you suffered PTSD and a mental health condition, the Board requested, and reviewed, the AO. The AO reviewed your service record as well as your petition and the matters that you submitted, including the mental health report that you provided. According to the AO:

Petitioner's in-service record revealed a discharge physical examination in which there were no medical or mental health symptoms or conditions noted. He was deemed medically qualified for discharge. The remainder of Petitioner's in-service records did not contain evidence of a diagnosis of a mental health condition or psychological / behavioral changes, which may have indicated a mental health condition. Throughout his disciplinary actions, counselings, and administrative processing, there were no concerns cited which would have warranted referral to mental health resources. Additionally, though Petitioner claimed misconduct due to mental health conditions diagnosed post-discharge, he also provided alternate reasons for his misconduct regarding his UA (on annual leave and missed an airline flight), negligent dereliction of duty due to failing to return a firearm to the armory at █ (reported the charges stated he "should have known" his automobile "would break down"), and larceny (pawned a television rented from the Marine Corps Exchange to buy milk and diapers for his baby and returned the TV at the end of the rental period). These explanations provided for his in-service misconduct behaviors do not reflect circumstances attributable to a mental health condition. Though Petitioner provided post-discharge diagnoses of PTSD and Major Depression, based on the available evidence contemporary to his military service, it is my considered medical opinion there is insufficient objective evidence to support Petitioner's contention he suffered from an unfitting mental health condition at the time of his military service, or that his in-service misconduct could be attributed to an unfitting mental health condition.

You submitted a rebuttal to the AO, in which you urged "the Board to reconsider its advisory opinion before issuing a decision because to conclude that [you] did not experience a mental health condition during service: (i) minimizes the psychological damage of racist actions and behaviors that he was continually subjected to during service and (ii) does not account for the intersectional nature of mental health conditions that result, at least in part from, racial harassment, abuse, and differential treatment based on race." Your rebuttal was provided to the preparer of the AO, who responded on 31 October 2021, that:

I have reviewed the 10/23/21 Letter of Rebuttal from Petitioner's Counsel to the 9/21/21 Advisory Opinion. Though Counsel's argument that Petitioner developed PTSD and Major Depression as a result of chronic exposure to racial discrimination, harassment, and abuse (which has been increasingly acknowledged in the mental health literature and VA administrative findings as a valid consideration in the development of PTSD or other mental health conditions), the preponderance of the objective evidence in the records contemporary to Petitioner's service, does not support the contention of in-service depression or PTSD, or mitigation of his in-service misconduct. No additional

clinical evidence was presented in support of Petitioner's application. Therefore, the original AO stands as written.

Based upon its review, the Board concluded the potentially mitigating factors that you raised were insufficient to warrant relief. With respect to your contention relating to a mental health condition, the Board concurred with the findings of the AO, which included that your in-service records did not reveal any evidence of a mental health condition, that throughout your disciplinary processes there was no indication of a mental health component, and that you provided shifting rationales for your misconduct. Further, in concurring with the AO, the Board observed that, despite the activity that you contend you experienced in 1976, and which you contend gave rise to your PTSD, you served honorably and without incident until approximately 1984. Therefore, the Board determined that there was no nexus between the incident(s) that you contend gave rise to your PTSD with your misconduct, which, according to your Official Military Personnel File, did not begin until many years later. Concerning the post-service matters that you presented in clemency and/or mitigation, the Board commended you on your achievements post-service. However, the Board observed that the matters that you presented did not rise to the level of overcoming the misconduct upon which your discharge was based. 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,

11/15/2021

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Executive Director

Signed by: █