



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: 4790-21

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 17 December 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 23 July 1996. On 15 October 1997, you were counseled that you were eligible but not recommended for promotion for the month of September due to failure to obey orders. On 30 October 1997, you received nonjudicial punishment (NJP) for failure to go to your appointed place of duty. On

29 November 1997, you were counseled for failure to do extra duty, and awarded at an Article 15 for failure to obey orders from the Barracks Duty NCO. On 23 February 1999, you were counseled for disrespect toward a SNCO and for disobeying an order to place your uniform in alternations in preparation for an upcoming uniform inspection. On 29 March 1999, you acknowledged that you may be processed for separation due to minor disciplinary actions or patterns of misconduct. On 9 April 1999, you received NJP for uttering worthless checks to MWR in the amount of \$400.98. On 14 July 1999, you received NJP for being absent without authorization from Rifle Range Formation. In February and March 2000, you were not recommended for promotion due to a physical fitness test failure. In December 2000, you were counseled for “an affray at your government house residence on 18 October 2000.” On 9 May 2001, you were found guilty at special court martial proceedings of violating the Uniform Code of Military Justice, Article 81 (conspiracy), Article 107 (false official statement and false official document), and Article 134 (unlawfully subscribed a false official statement). The Court sentenced you to be discharged with a bad conduct discharge, confinement at hard labor from 120 days, and reduction to the rank of E-1. On 5 November 2001, you were notified of assignment to involuntary appellate leave. On 1 October 2002, the Navy-Marine Corps Appellate Review Activity completed appellate review of the special court martial findings and sentence. On 17 October 2002, the Navy and Marine Corps Appellate Leave Activity approved the sentence and ordered the bad conduct discharge to be executed. On 20 October 2002, you received a bad conduct discharge and a reentry (RE) code of RE-4.

In your application for correction, you ask for an upgrade to your discharge characterization from a bad conduct discharge to a general discharge. You contend that the punishment you received did not fit the crime. You admit that what you did was wrong but claim that falsely filing a report should not warrant the punishment you were given. You state that you had just given birth at 26 weeks pregnant. You assert that you and your baby almost died but that the circumstances of the birth were not considered. You also state that you had gotten into an altercation with the baby’s father and none of that was considered.

As part of the review process, a Licensed Clinical Psychologist reviewed your request and issued an Advisory Opinion dated 27 October 2021. The Advisory Opinion stated that there is no evidence in your service records that you were diagnosed with or suffering from a mental health condition. The Advisory Opinion noted that even if you were suffering from a mental health condition such as post-partum depression, the majority of your misconduct was earlier in your career and that there was a history of deceit before pregnancy, which makes it difficult to attribute false statements to a mental health condition incurred as a result of pregnancy. The Advisory Opinion concluded that there is insufficient evidence that you may have incurred a mental health condition during military service, and there is insufficient evidence that your misconduct could be attributed to a mental health condition. 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 your contention that you were suffering from a mental health condition that mitigated your in-service misconduct. The Board also considered your assertion that the punishment of a bad conduct discharge was not appropriate for the crimes for which you were convicted. The Board considered the analysis and conclusions of the Advisory Opinion, and concurred substantively with its determination that the evidence does not establish that you suffered from a mental health condition at the time of your military service that may mitigate your misconduct. Even taking into consideration your statements regarding the early birth of your child and the altercation with the baby's father, the Board determined that your misconduct of conspiracy and false official statement/false official document was not mitigated. Furthermore, the Board noted that your special court martial proceedings findings and sentence were reviewed and approved, and that the bad conducted was executed by the Navy and Marine Corps Appellate Leave Activity. The Board concluded that your bad conduct discharge was issued without error or injustice, and that an upgrade 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,

1/9/2022

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Executive Director

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