



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: 4815-21
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 7 February 2022. 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, 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 the advisory opinion (AO) furnished by qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

During your enlistment processing you disclosed a pre-service disciplinary history of resisting arrest and multiple traffic violations on DD Form 1966. A moral charges waiver was granted and you were allowed to enlist.

You enlisted in the U.S. Marine Corps (USMC) and began a period of active duty on 4 January 1984. On 1 February 1985, you received your first nonjudicial punishment (NJP) for wrongfully using cocaine. On 15 April 1985, you were counseled for failing to complete formal drug classes due to poor attendance. On 18 April 1985, you received a second NJP for three specifications of unauthorized absence (UA). This NJP was followed by two counseling sessions in September

1985, the latter for being disrespectful to a non-commissioned officer. A mental status exam was conducted on 24 September 1985, resulting in your diagnosis of an anti-social personality disorder, which existed prior to enlistment (EPTE) and recommending you be administratively discharge for unsuitability. On 7 October 1985, you received a third NJP for a 3-day UA and insubordinate conduct. On 20 October 1985, a staff judge advocate reviewed your case and found the proceedings to be sufficient in law and fact. On 25 October 1985, you were informed of your Commanding Officer's (CO) intent to recommend to the discharge authority that you be separated with an other than honorable (OTH) characterization of service for pattern of misconduct (POM) as evidenced by your NJPs. Your CO added, "Retention...would adversely affect the morale, discipline, and military effectiveness of this organization." The discharge authority concurred with your CO's recommendation and you were so discharged on 1 November 1985.

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 your discharge resulted in injustice as you were only 19 years old at the time, were facing severe mental issues as a result of things you were exposed to during your deployment to █, and because of this you made poor decisions and were discharged. The AO noted there were no post-service medical records available for review. As such, the AO opined, based on current available evidence there is insufficient evidence that you may have incurred an unfitting mental health condition during your military service, and there is insufficient evidence that your misconduct could be mitigated by an unfitting 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 Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge and your contentions noted above. The Board viewed your allegations with serious concern. However, this Board is not an investigating agency nor does it have the resources to investigate unsubstantiated allegations. Additionally, in addition to considering your statement and character letters, the Board 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. Lastly, 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,

2/22/2022

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Executive Director

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