



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: 5196-21

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 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 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). Additionally, the Board also considered the advisory opinion (AO) furnished by a qualified mental health provider, which was previously provided to you. You were afforded an opportunity to submit an AO rebuttal, and you did 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 on 12 October 1999. Your pre-enlistment physical examination was on 20 August 1999 and on your corresponding pre-service medical history, you expressly denied ever being treated for a mental health condition, consulting or being treated by clinics, physicians, healers, or other practitioners within the past 5 years for other than minor illnesses, and ever attempting suicide.

On 3 April 2001 you received non-judicial punishment (NJP) for forgery when you altered visitor passes for the purpose of illegally bringing local nationals onto the base. On 31 May 2001 your command issued you a "Page 11" counseling warning (Page 11) documenting your unauthorized absence (UA) and insubordinate conduct. The Page 11 expressly warned you that a failure to take corrective action in this matter and/or any other matter of misconduct could result in administrative reduction, administrative separation, and/or limitation of further service. You did not make a Page 11 rebuttal statement.

On 4 June 2001 you received NJP for UA and insubordinate conduct. You did not appeal your NJP. On 25 October 2001 you received NJP for UA lasting two days. You did not appeal your NJP. On 26 October 2001 your command issued you a Page 11 documenting your UA and insubordinate conduct. The Page 11 expressly warned you that a failure to take corrective action may result in NJP, administrative separation, and/or limitation of further service. You did not make a Page 11 rebuttal statement.

You committed additional misconduct, namely UA and making a false official statement. Your command initially wanted to adjudicate such charges at NJP. However, on 4 February 2002 you exercised your right to refuse to accept adjudication at NJP. Your NJP refusal did not preclude your command from taking other adverse actions against you. Subsequently, your command preferred such charges to a Special Court-Martial.

On 21 March 2002 you submitted a voluntary written request for an administrative discharge in lieu of trial by court-martial for your UA and false official statement. Prior to submitting this voluntary discharge request you conferred with a qualified military lawyer, at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. You expressly admitted that you were guilty of your UA and false official statement and requested a general (under honorable conditions) (GEN) characterization. You also acknowledged if your request was approved, an other than honorable conditions (OTH) characterization of service was the least favorable characterization authorized notwithstanding your GEN request. As a result of this course of action, you were spared the stigma of a court-martial conviction for your UA and false official statement, as well as the potential sentence of confinement and the negative ramifications of receiving a punitive discharge from a military judge. In the interim, your separation physical on 11 April 2002 noted no psychiatric or neurologic conditions or symptoms and you were found medically qualified for separation. Ultimately, on 16 April 2002 you were separated from the Marine Corps with an OTH discharge characterization and assigned an RE-4 reentry code.

On 12 May 2011 the Naval Discharge Review Board (NDRB) determined that your discharge was proper as issued and no change was warranted. 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 18 October 2021. The Ph.D. initially noted that you contended that you were suffering from undiagnosed PTSD from childhood trauma, which included abuse and neglect, and argued such symptoms contributed to your poor coping with military stress and resulted in misconduct. The Ph.D. observed that your active duty service records do not indicate any mental health diagnosis. The Ph.D. noted that there was evidence of post-service PTSD, depression, and generalized anxiety disorder diagnoses. However, the Ph.D. determined that the limited clinical records you provided contained insufficient evidence of symptoms of PTSD or other mental health conditions experienced on active duty or any link between such purported symptoms and your active duty misconduct. The Ph.D. also determined that your 2021 diagnosed PTSD symptoms may have been triggered by a 2019 carjacking incident where you received a gun shot wound. The Ph.D. further determined while avoidance and irritability could be symptoms of a mental health condition mitigating some of your misconduct, forged documents and false statements are not typical symptoms of a mental health condition. The Ph.D. concluded by opining that there is insufficient evidence of PTSD or a mental health condition incurred on active duty, and there is insufficient evidence to attribute your misconduct to a mental health condition.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warranted relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to your contentions that: (a) you were suffering from undiagnosed PTSD related to unresolved childhood traumas you had experienced, and such unresolved issues manifested themselves in ways that led to your adverse issues on active duty; (b) the issues leading to your PTSD were not incurred on active duty, but prior to service; (c) there is a direct correlation between your previously undiagnosed PTSD and the behavior leading to your issues on active duty, leaving you susceptible to symptoms such as dysregulation and dysfunction; (d) your undiagnosed PTSD only came to light years later; (e) your PTSD being diagnosed years later does not negate the fact that it led to adverse issues and effects on active duty; and (f) PTSD contributed to your poor decision-making and made you give up and face discharge rather than fight your final NJP. However, given the totality of the circumstances, the Board determined that your request does not merit relief.

In accordance with the Hagel, Kurta, 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. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. The Board also concluded that certain intentional misconduct underlying your discharge (false official statements and forgery) was not the type of willful misconduct that would be mitigated by a mental health condition. Even if the Board assumed that the totality of 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 demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

The Board also observed that the 21 June 2021 clinical record you submitted noted “past suicide attempts during childhood/teenage years, while separating from the military.” The Board noted that you expressly denied ever attempting suicide on your pre-service medical history. The Board determined that you had a legal, moral, and ethical obligation to remain truthful on your enlistment paperwork. Had you properly and fully disclosed your pre-service suicide attempt(s) you would have been disqualified from enlisting.

The Board also observed 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 in conduct was 3.97. 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 serious misconduct which further justified your OTH characterization of discharge.

The Board 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. The Board determined that characterization under OTH conditions is generally warranted for misconduct and 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 generally will not 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 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 misconduct clearly merited your receipt of an OTH and that your separation was in accordance with all Department of the Navy directives and policy at the time of your discharge.

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,

12/23/2021

[REDACTED]

Executive Director

[REDACTED]