



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: 5232-21
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 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 10 January 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, 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 considered a 16 November 2021 advisory opinion (AO) furnished by a qualified mental health provider, a copy of which you were provided, and to which you did not provide a response.

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 commenced a period of active duty on 2 October 1972. On 12 March 1973, you received nonjudicial punishment for failing to obey the order of a staff sergeant. On 20 March 1973, you received nonjudicial punishment for violating a lawful order and for failing to go to formation. Thereafter, on 24 March 1973, you were issued a formal

written warning concerning your failure to perform your duties in a satisfactory manner. On 28 March 1973, you received nonjudicial punishment for breaking restriction and failing to obey an order. In May 1973, you received nonjudicial punishment on two occasions, for a two day period of unauthorized absence and for failing to obey an order. You were in a period of unauthorized absence from 29 July 1973 to 4 August 1973, and again from 12 September 1973 to 26 February 1974. You were in the custody of civilian authorities for the latter period based on a charge of grand theft. On 1 August 1974, you were convicted by a special court-martial for periods of unauthorized absence totaling 161 days, disrespect to an officer, and disrespect to a corporal. On 18 December 1974, you received nonjudicial punishment for disrespect to an officer and disobeying the order of an officer on two occasions. On 7 March 1975, you were notified of the initiation of administrative separation processing and your rights in connection therewith. You waived your right to an administrative discharge board. On 10 March 1975, a Marine Staff Judge Advocate found that your proposed discharge was sufficient in law and fact. On 11 March 1975, the discharge authority directed that you be discharged with an other than honorable characterization of service, and on 14 March 1975, you were so discharged.

You filed an initial application with the Naval Discharge Review Board (NDRB) in 1975, contending that you should have received a medical discharge as a result of your flat feet and the loss of a testicle during military service. On 23 October 1975, the NDRB denied your application. You filed another application with the NDRB in 1976, contending that your flat feet were aggravated by military service, which led to your misconduct. On 28 March 1977, the NDRB denied your application. In 2012, you filed an application with this Board, asserting as mitigating factors, your youth, mental health issues, and desire to upgrade your discharge. On 29 May 2013, this Board denied your petition.

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, while you were on active duty, you suffered from mental health conditions that you believe were present since childhood with symptoms of depression, poor sleep habits, low energy, poor concentration, suicidal thoughts, appetite changes, isolation, paranoia, auditory and visual hallucinations and anxiety. You further state that you believe you should have been classified as unfit for military service, and you're your educational history of being in special education from the third grade until your final grade completed, ninth, should have disqualified you from military service. Finally, you contend that while you were in the service, you struggled with unwanted homosexual advances from men dressed as women during training and you suffered the loss of a testicle due to a training accident.

In connection with your assertion that you suffered from 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. According to the AO:

Petitioner's in-service records contained an enlistment physical examination that noted Pes Planus (flat feet) and no history of mental health symptoms/conditions or substance abuse. He was found physically qualified for enlistment. On his discharge physical examination, the examining physician deemed him medically

qualified for discharge. He successfully completed his initial and follow-on training in the Marine Corps and was assigned to operational units without any duty limitations. Throughout his military service, counselings, disciplinary procedures, and administrative processing, there were no concerns for any mental health issues indicating a referral to mental health services. Though he provided postdischarge clinical evidence of diagnoses of Major Depression, Generalized Anxiety Disorder, and Learning Disorder, rendered thirty-plus years after service, these reports, as well as his personal statement, did not reasonably describe how any contended mental health symptoms experienced during his military service reflected significant occupational impairment or linkage to his in-service misconduct.

The AO concluded, “it is my considered medical opinion that there is insufficient evidence that the Petitioner may have incurred an unfitting mental health condition during military service, or that his misconduct could be mitigated by an unfitting mental health condition.”

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’s finding that there was insufficient evidence that you may have incurred an unfitting mental health condition during military service, or that your misconduct could be mitigated by an unfitting mental health condition. The Board observed that, while you were on active duty, you received nonjudicial punishment on six occasions, and you were convicted by a special court-martial. Under your circumstances, the Board was unable to find an error in your discharge and the assignment of an other than honorable characterization of service, and thus, denied your petition.

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,

1/18/2022

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Executive Director
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