



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: 5946-21
Ref: Signature Date

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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 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 Board waived the statute of limitation 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 18 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 the 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 to 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). 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 a rebuttal to the AO, but did not.

You enlisted in the Marine Corps began a period of active service on 19 July 1976. After transferring overseas, you injured your lower back, which resulted in several prolonged periods of hospitalization. After initially failing to respond to outpatient treatment, you were placed on bed rest for 22 days beginning 14 February 1977. Due to difficulties with obeying the requirements of bed rest and other behavior during your hospital stay, you were referred to a psychiatric evaluation, which observed that you had poor adjustment to your overseas transfer resulting in increasing difficulty coping with routine stress. You also expressed that hospitals

made you nervous, you worried all the time about your newborn daughter who had been born stateside after your transfer, and you were afraid that you might do something drastic if you were not permitted to leave the hospital. Based upon this evaluation, you were diagnosed with an inadequate personality due to your immature character and difficulty adapting. The psychiatrist recommended administrative separation due to unsuitability. Pain from your back injury failed to resolve, and you were medically evacuated back to the continental U.S. for further treatment, initially being placed in pelvic traction. During your second period of hospitalization, you received another psychiatric evaluation which noted concern for immature personality, again diagnosed inadequate personality, and assessed the feasibility of your return to a duty status against processing you for an administrative discharge. You remained on total bed rest another 26 days prior to being discharged on 6 April 1977 to return to duty with limitations on lifting. You attended subsequent orthopedic follow-ups due to continued pain for which further examination could not identify a physical cause and requested another psychiatric evaluation due to "physical complaints for which no medical evidence" could be found. The follow-up psychiatric evaluation on 11 May 1997 concurred with the previous diagnosis of inadequate personality and again recommended administrative separation. Your record contains naval message traffic spanning from 17 May 1997 to 9 June 1997 addressing your release from the hospital and return to a duty status. On 27 June 1997, your command requested an orthopedic evaluation of your fitness for duty following multiple nonproductive visits.

From July through November of 1997, you have multiple counseling entries identifying periods of UA and then documenting the excusal of several periods of absence as unavoidable. However, not all of those absences were excused. On 13 July 1997, you received nonjudicial punishment (NJP) for violation of Article 86, unauthorized absence (UA), after you failed to report at 1300 for a unit formation. You were again seen by orthopedics for a follow-up which reiterated the recommendation for administrative discharge made in April of 1977. You received a second NJP on 28 November 1977 for violation of Article 86, UA.

On 13 January 1978, your command received a Congressional Inquiry based on your request for assistance with your discharge, which you indicated had been pending for approximately 7 months. In your letter, you indicated that you were on the verge of a nervous breakdown at the lack of action. On 20 January 1978, you were notified of processing for administrative discharge for the reason of unsuitability due to a character disorder. Evaluation of your performance and the recommendation for your character of discharge was routed on 30 January 1978 which recommended a characterization of General (Under Honorable Conditions) (GEN) based upon repeated periods of UA and complaints of pain which you were perceived to use "to escape from any assigned task" which did not suit you. Comments included that you could "only be presumed to have some sort of a mental disorder" and that it was unlikely you would "be of any value" in view of your medical problems. On 21 February 1978, the Division Psychiatrist reaffirmed the validity of the previously diagnosed character disorder. The final memorandum submitted to the separation authority further specified that you were presently pending charges for an additional period of UA, and you were discharged on 6 March 1978 with a GEN discharge.

The Board carefully weighed all potentially mitigating factors, such as your desire to upgrade your characterization of service and to qualify for burial rights based on your contention that you

were under medical care for physical and mental health problems at the time of your discharge and, therefore, should have received an honorable discharge, as well as your evidence of service-connected injury and a pending claim before the Department of Veteran's Affairs (VA) for acquired psychiatric disability to include post-traumatic stress disorder (PTSD), a pain disorder associated with psychological factors, a mood disorder, and a generalized anxiety disorder. Because you contend a mental health condition either incurred in or aggravated by active military service, the Board also considered the AO, which reviewed your service records and the supporting documents submitted with your request. The AO observed that your in-service records revealed an in-service diagnosis of a character disorder due to inadequate personality and that non-medical evidence documented that your condition interfered with your ability to adequately function as a Marine, which resulted in your administrative discharge. The post-service records you provided in support of your contentions do not provide a clinical history of onset, type of symptoms, or description of the condition sufficient to determine the effect on your occupational function or a nexus to your misconduct of multiple UAs.

As a result, the Board concurred with the AO that the preponderance of objective evidence failed to establish that you suffered from PTSD or another unfitting mental health condition during your military service or that your in-service misconduct could be attributed to such condition. Based upon the totality of its review, although the Board acknowledged that your misconduct did not begin until after multiple medical recommendations for your administrative discharge due to medical reasons, it concluded the potentially mitigating factors you submitted were insufficient to warrant relief in the form requested. Specifically, the Board noted that you were not discharged for the reason of misconduct, that your record of discharge or release from active duty does not identify the narrative reason for your discharge, and your characterization of service was under honorable conditions. Therefore, the Board determined that your GEN discharge accounted for your documented decline in performance and your misconduct of repeated UAs outweighed the available mitigation evidence in favor of an "Honorable" discharge. Accordingly, 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 is attached 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,

3/9/2022

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Executive Director

Signed by: █