



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: 6303-21
Ref: Signature Date



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 your application was not filed 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 23 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 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 an advisory opinion (AO) from a qualified mental health professional dated 11 January 2022 which was previously provided to you.

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 Marine Corps and began a period of active duty on 7 March 1984. On 21 January 1985, you were counseled for the following deficiencies: lackadaisical and uncooperative attitude resulting in poor performance. You were advised that failure to take corrective action could

result in administrative separation. On 16 April 1985, you were absent from your appointed place of duty during two separate occasions. On 9 May 1985, you were counseled for the following deficiencies: poor performance, lackadaisical attitude, misconduct for failing to go to appointed place of duty, failure to obey base regulations by having female visitor registered at the Camp Hostess House as his wife, and making attempts to borrow monies from the Navy Relief to support non-existent wife. You were advised that failure to take corrective action could result in administrative separation. On 10 May 1985, you began a period of unauthorized absent (UA) which lasted 7 hours, and 30 minutes. On 7 June 1985, you were convicted by summary court martial (SCM) for three periods of UA from appointed place of duty. You were sentenced to reduction to the rank of E-1, forfeiture of pay, and restrictions for 60 days. On 11 July 1985, you received nonjudicial punishment (NJP) for wrongfully possess trace amounts of marijuana, and wrongful use of a controlled substance. On 12 July 1985, a medical officer determined that you were nondependent on drugs. On 18 July 1985, you were enrolled on the drug rehabilitation program with surveillance required. On 1 August 1985, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct and drug abuse, at which point, you elected to waive all your procedural rights. On the same date, your commanding officer recommended an other than honorable (OTH) discharge characterization of service by reason of misconduct due to pattern of misconduct and drug abuse. On 7 August 1985, your administrative separation proceedings were determined to be sufficient in law and fact. On 14 August 1985, the discharge approval authority approved and ordered an OTH discharge characterization of service by reason of misconduct due to pattern of misconduct and drug abuse. On 26 August 1985, you were discharged.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 11 January 2022. The AO determined that there is no evidence in your record indicating that you were diagnosed with a mental health condition while in service, although there is behavioral evidence of a substance use disorder. The AO also noted that you did not provided any post-service medical evidence in support of your claim, and your personal statement is lacking sufficient detail to establish a nexus of your misconduct. Additional records (e.g., a detailed personal statement or complete post-service mental health records describing diagnosis, symptoms, and specific link to misconduct) are required to render an alternate opinion. Based on the available evidence, the AO concluded that there is insufficient evidence that you incurred PTSD or another unfitting mental health condition during military service. Further, the AO also concluded that there is insufficient evidence that your misconduct could be attributed to PTSD or another unfitting mental health condition. The AO was provided to you on 12 January 2022 and you were given 30 days in which to respond. When you did not respond after 30 days, your case was submitted to the Board for review.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contentions that: (a) you were very immature and irresponsible while in service; (b) you were suffering from the disease of addiction for many years; (c) you have been clean for 8 years; and (c) you have become a drug counselor for narcotics anonymous. Even under the liberal consideration standard, the Board discerned no procedural defect, impropriety, or inequity in your discharge. Unfortunately, the Board, relying on the AO and applying liberal consideration, did not find evidence of an error or injustice that warrants upgrading your discharge characterization of service. Further, the Board noted you did not provide

documentation or advocacy letters for consideration and concluded there was insufficient evidence to warrant upgrading your father's character of service based on clemency.

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 the contentions discussed above. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidence of your NJP, and SCM outweighed these mitigating factors. 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,

3/9/2022

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Executive Director

Signed by: █