



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: 6988-21
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 limitation 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 16 March 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). The Board also considered an advisory opinion (AO) from a qualified mental health professional dated 3 February 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 the Marine Corps and began a period of active duty on 7 August 1976. On 4 November 1976, you were convicted by a special court-martial (SPCM) of an unauthorized absence totaling 37 days. On 25 July 1977, you were again convicted by a SPCM of an

unauthorized absence totaling 93 days. Subsequently, you commenced a period of unauthorized absence on 20 March 1978 that continued until 23 December 1985. On 17 January 1986, you submitted a written request for separation in lieu of trial by court-martial for an unauthorized absence totaling 2835 days. Prior to submitting this request, you conferred with a military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you admitted your guilt to the foregoing offense and acknowledged that your characterization of service upon discharge would be other than honorable (OTH). The separation authority approved your request and directed your commanding officer to discharge you with an OTH characterization of service. As a result, you were spared the stigma of a court-martial conviction, as well as the potential penalties of a punitive discharge. You were discharged on 23 January 1986.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 3 February 2022. The AO noted that there is no evidence that you were diagnosed with a mental health condition during military service. Additionally, you have provided no post-service medical documentation to support your claims. Unfortunately, your personal statement is not sufficiently detailed to provide a nexus with your misconduct. Additional records are required to render an alternate opinion. The AO concluded by opining that there is insufficient evidence that you may have incurred an unfitting mental health condition during military service, and there is insufficient evidence that your misconduct could be attributed to an unfitting mental health condition.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contentions that: a) during your time in service, you were abused from basic training until the day you departed; b) during basic training you were assaulted/beaten repeatedly as well as dragged through a moat ditch while handcuffed; c) after basic training you were racially profiled; d) you have constant flashbacks of being beaten and assaulted; e) you were having family issues; f) you tried your best to be a good Marine and father, but you were met with abuse at every turn; and g) you have been in mental health treatment since your discharge. Unfortunately, the Board, applying liberal consideration, relying on the AO, and noting you did not submit any documentation regarding your mental health condition, did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service.

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 character of service and contentions as previously discussed. For purposes of clemency consideration, the Board noted you did not provide a statement or supporting documentation describing post-service accomplishments, or advocacy letters.

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your two SPCM convictions, 2835 days of unauthorized absence, and subsequent separation at your request to avoid trial by court-martial, outweighed these mitigating factors. The Board did not find evidence of an error or injustice that warrants upgrading your

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characterization of service or sufficient evidence to warrant clemency. Finally, the Board noted you received a benefit from being allowed to separate with an OTH character of service instead of risking greater punishment at a court-martial that likely would have included a punitive discharge based on your lengthy absence. 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 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,

3/28/2022

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Executive Director
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