



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

█
Docket No: 7427-21

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 4 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). 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, but you did not 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 initially enlisted in the Marine Corps Reserve (USMCR) on 15 December 2008. Your pre-enlistment physical examination on 6 December 2008 and self-reported medical history both

noted no psychiatric or neurologic conditions or symptoms. On 20 June 2009 you were honorably discharged at the completion of your initial recruit training and required active service. Upon your discharge, you were initially assigned to a USMCR unit situated in the █ area.

As part of your enlistment paperwork, on 4 December 2008 you had previously signed an acknowledgement entitled, "Statement of Understanding Upon Enlistment of the Marine Corps Reserve Optional Enlistment Program" (SOU), regarding the satisfactory participation requirements with the USMCR. Such SOU stated that satisfactory participation in the USMCR consisted of the performance of forty-eight scheduled weekend drills and not less than fourteen days of active duty for training during each year of your contract. You expressly acknowledged that you were required to attend drills and training periods and your failure to attend drills and training periods could result in a less than honorable discharge.

However, between August and October 2011 you failed to attend certain scheduled reserve drills and accumulated twelve unexcused absences to deem you an unsatisfactory participant in the USMCR. On 24 October 2011 your command personally served you at your home address with a notification of administrative separation proceedings by reason of unsatisfactory participation in the Ready Reserve and a corresponding acknowledgment/election of rights form. On the same day you completed and signed the election of rights form where you expressly waived your rights to consult with counsel, submit written rebuttal statements, and to request a hearing before an administrative discharge board.

In the interim, the Staff Judge Advocate at Headquarters, █ Marine Division determined that your separation was legally and factually sufficient. Ultimately, on 26 October 2012 you were separated from the Marine Corps for unsatisfactory participation in the Ready Reserve with an other than honorable conditions (OTH) characterization of service and assigned an RE-4 reentry code. In this regard, you were assigned a correct characterization and reentry code based on your factual situation.

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 12 January 2022. The Ph.D. initially observed that your service record did not contain evidence of a mental health diagnosis or reported psychological symptoms/behavioral changes indicative of an unfitting mental health condition. The Ph.D. noted that you did not provide any clarifying information about the trauma related to your purported PTSD. The Ph.D. concluded by opining that the preponderance of available objective evidence failed to establish you suffered from a mental health condition on active duty or that your misconduct could be mitigated by a mental health condition.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant 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 would like to reenlist in the U.S. Army; (b) your command only viewed you as a thug based on your hometown; (c) you started college at the time when you began weekend USMCR drills; (d) you

had no misconduct prior to being assigned to your reserve unit; (e) you have had no misconduct in the civilian world; and (f) you believe PTSD was the problem during your time in the USMCR. However, given the totality of the circumstances, the Board determined that your request does not merit relief.

In accordance with the Kurta, Hagel, 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 convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health conditions or symptoms were related to or 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 symptoms. Moreover, the Board observed that you did not submit any clinical documentation or treatment records to support your mental health claims despite a request from BCNR on 22 November 2021 to specifically provide additional documentary material. Even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board also observed that you signed an SOU prior to affiliating with the USMCR. The SOU clearly outlined the annual requirements for your satisfactory participation in the USMCR. The Board also noted that no evidence exists in the record that you ever made up any missed drills. The simple fact remains is that you failed to attend required scheduled drills and you were absent without legal authority, justification, or excuse. The Board determined the record clearly reflected that your misconduct was willful and intentional and demonstrated you were unfit for further USMCR service. The Board also determined that you did not provide convincing evidence to corroborate or substantiate your contention of a hostile work environment by your chain of command based on your hometown. The Board also concluded that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions.

Additionally, 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 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 and/or change a reentry code solely for the purpose of facilitating VA benefits and medical treatment, or enhancing educational or employment opportunities, including military enlistments. 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 reentry code, and the Board concluded that your misconduct involving shirking your USMCR responsibilities clearly merited your OTH discharge and RE-4 reentry code.

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,

3/9/2022

