



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: 7643-21
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 18 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 an advisory opinion (AO) furnished by qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you did not do so.

You enlisted in the Marine Corps on 23 February 1998. Your pre-enlistment physical on 30 January 1998 and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 18 December 1998 you received non-judicial punishment (NJP) for insubordinate conduct, driving on base with a suspended license, provoking speech directed towards a Sergeant, and the drunken operation of a vehicle onboard █ with a BAC of .14. As part of your punishment you received thirty days of correctional custody. You did not appeal your NJP.

On 17 March 1999 your command issued you a “Page 11” counseling warning (Page 11) documenting your constant disregard for authority, and a lack of self-discipline, motivation, integrity, and military bearing. The Page 11 expressly warned you that a failure to take correction may result in administrative separation under other than honorable conditions. You did not make a Page 11 rebuttal statement.

On 9 April 1999 you received NJP for unauthorized absence (UA) and insubordinate conduct. You did not appeal your NJP. On 26 May 1999 you received NJP for the wrongful use of marijuana, two separate specifications of UA lasting three days and twenty-eight days, respectively, and missing the movement of your unit. You did not appeal your NJP.

On 14 October 1999 you were convicted at a Special Court-Martial (SPCM) of UA lasting thirty-three days, the wrongful use of marijuana, and breaking restriction. You received as punishment four months of confinement, forfeitures of pay, and a discharge from the Marine Corps with a Bad Conduct Discharge (BCD). On 15 May 2000 the Convening Authority approved the SPCM sentence as adjudged but suspended confinement in excess of forty-five days. On 9 June 2000 you were placed on involuntary leave awaiting your BCD.

On 17 April 2001 the Navy-Marine Corps Court of Criminal Appeals affirmed the SPCM findings and sentence. Upon the completion of appellate review in your case, on 2 October 2001 you were discharged from the Marine Corps with a BCD and assigned an RE-4B reentry code.

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 3 February 2022. The Ph.D. initially observed that there was no evidence in your service record that you were diagnosed with a mental health condition, and that you provided no post-service medical records to support your mental health claims. The Ph.D. concluded by opining that there was insufficient evidence you incurred PTSD or another unfitting mental health condition on active duty, and there was insufficient evidence your misconduct could be attributed to PTSD or another unfitting 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 were falsely prosecuted and no charges were officially filed against you; (b) you did not serve time for any charges; and (c) you were young and scared so you did what your lawyer coerced you to do so you took the BCD. However, given the totality of the circumstances, the Board determined that your request does not merit relief.

In accordance with the Hagel, Kurta, 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 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 conditions or 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 2 December 2021 to specifically provide additional documentary material. The Board unequivocally determined the record clearly reflected that your misconduct was willful and intentional and demonstrated you were unfit for further service. 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.

The Board noted that you did not provide any convincing evidence to either corroborate or substantiate any of your primary contentions. Further, 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. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. Accordingly, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard for mental health conditions, the Board concluded that your serious misconduct and disregard for good order and discipline clearly merited your receipt of a BCD.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this is not a case warranting any clemency. Accordingly, the Board did not find any evidence of an error or injustice in this application that warrants upgrading your BCD. 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.

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,

3/24/2022

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Executive Director

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