



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

[REDACTED]
Docket No: 8079-21
Ref: Signature Date

[REDACTED]

Dear **[REDACTED]**

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 13 June 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 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. Although you were afforded the opportunity to submit a rebuttal, 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 enlisted and began a period of active duty in the Marine Corps on 10 July 1989. On 18 July 1990 and 29 August 1990, you were formally counseled concerning not being recommended for promotion to Lance Corporal due to irresponsibility, immaturity, needing constant supervision, and having a lackadaisical attitude. On 8 July 1991, you received nonjudicial punishment (NJP) for

striking a Lance Corporal in the face with your fist and for being drunk and disorderly in violation of Articles 128 and 134, Uniform Code of Military Justice (UCMJ). Your second NJP occurred, on 2 September 1991, for a three hour unauthorized absence and violation of a lawful regulation for disassembling and damaging the trigger mechanism on your rifle. These offenses were in violation of Articles 86, 92, and 108, UCMJ. On 3 September 1991, you were formally counseled concerning financial irresponsibility for insufficient funds of \$73. You received another formal counseling, on 17 March 1992, concerning your frequent involvement with military authorities and minor incidents prejudicial to good order and discipline. On 11 August 1992, you received a third NJP for failure to obey a lawful order by going on liberty while on light duty and malingering, in violation of Articles 92 and 115, UCMJ. On 1 October 1992, you were notified of administrative separation processing by reason of misconduct due to minor disciplinary infractions as evidenced by your NJPs and counseling entries. You did not exercise your procedural right to consult with counsel and you waived an administrative discharge board. On 16 December 1992, you were discharged with an Other Than Honorable (OTH) 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 change your narrative reason for separation, separation code, and reentry code along with an implied request to upgrade your characterization of service. In addition, the Board considered your contentions that you incurred PTSD from your time in the military, that you suffered from back pain and were not malingering, that being discharged was demoralizing as a young man who did not know how to deal with the consequences of the immature decisions you made, that you should have consulted with counsel at the time of your administrative separation processing and were not aware of the ramifications your discharge would have on your life, and that your post-service conduct warrants clemency. For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments and advocacy letters.

The Board also relied on the AO in making its determination. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition during his military service, or that he exhibited psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition requiring evaluation. Unfortunately, he has provided no post-service medical evidence in support of his mental health claims. The Petitioner's statement indicated that his misconduct was related to immature decision-making in the context of a chronic back injury. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) are required to render an alternate opinion.

The AO concluded, "[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence that he may have incurred PTSD during military service. There is insufficient evidence that his misconduct could be attributed to PTSD."

Based upon this review, the Board concluded that the potentially mitigating factors in your case were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your counseling entries and three NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. The Board concluded that your misconduct showed a complete disregard for military authorities and regulations. Ultimately, while the Board considered your post-discharge good conduct and accomplishments, they determined your misconduct was too serious to be offset by the mitigation evidence you provided. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization with no change to your narrative reason for separation, separation code, or reentry code. While the Board commends your post-discharge good character, after applying liberal consideration, the Board did not find evidence of an error or injustice that warrants changing any aspect of your discharge from the Marine Corps or granting clemency in your case. 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,

7/2/2022

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Executive Director

Signed by: █