



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: 331-22
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 13 May 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 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.

You enlisted and began a period of active duty in the Marine Corps on 20 August 1981. On 15 January 1982, you received nonjudicial punishment (NJP) for violation of a Naval regulation by wrongfully using marijuana. This offense was charged as violation of Article 92, Uniform Code of Military Justice. On 23 February 1983, you received a formal counseling entry in your service record indicating that you were eligible but not recommended for promotion to the rank of Lance Corporal for the month of March 1983 due to a civilian drug conviction. You were notified of administrative separation processing, on 21 April 1983, by reason of misconduct due to drug abuse

based on one NJP and one civilian conviction. You consulted with counsel and requested an administrative discharge board (ADB). The ADB convened on 27 May 1983, substantiated that the misconduct had occurred, noted you had received the proper leadership and counseling concerning your drug problems, and recommended by a vote of three to two that you be discharged with an Other Than Honorable (OTH) characterization of service. On 7 June 1983, the staff judge advocate found the proceedings to be sufficient in law and fact and you were discharged, on 14 June 1983, with an OTH.

You contend that you witnessed and experienced racial discrimination throughout your service in the Marine Corps. You state you had several experiences where you were directly or underhandedly treated differently than your peers because you are black. You further state that a more supportive and nondiscriminatory environment would have yielded a different career outcome. You contend you were disciplined differently than white service members and you were not offered treatment or counselling for drug use which you state is contrary to your service record. You further contend you were extremely proficient and assigned to the best and most prominent positions on base and because of this, many assumed you were white. You state that as your acumen for communications increased, the pressures of military life wore on you and there were times of marijuana use. In particular, you state that a group of service members and your friends were smoking marijuana and the military police assumed it was you and your friend. You further state you took a friend's car for a drive, were stopped by military police, the military police found drug paraphernalia in the car, and you were arrested. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

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 contentions noted above and desire to upgrade your discharge. The Board also relied on the AO in making its determination. The AO noted in pertinent part:

There is no evidence in the available records that the Petitioner was diagnosed with a mental health condition during military service. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Substance use is incompatible with military readiness and discipline and considered amenable to treatment, depending on the individual's willingness to engage in treatment. While it is possible that his misconduct could be attributed to a potential substance use disorder, the Petitioner's personal statement indicated an awareness of his misconduct and responsibility for his behavior. The Petitioner has provided no post-service medical evidence in support of his claims of PTSD. His personal statement is not sufficiently detailed to establish a clinical diagnosis or a nexus with his misconduct. 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 of a diagnosis of PTSD that may be attributed to 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 NJP and civilian conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included two drug offenses. Furthermore, the Board noted that on 9 June 1993, the separation authority directed your commanding officer to ensure you received a physical examination and that you were physically qualified prior to discharge, contrary to your contention that you received no treatment or counseling. Finally, the Board considered the findings of the ADB that also documented you received proper leadership and counseling for your drug problem. 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. After applying liberal consideration, the Board 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. 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,

6/4/2022

