



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: 372-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 10 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 the 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 to 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. You were afforded an opportunity to submit a rebuttal to the AO, but did not.

You enlisted in the Marine Corps and began a period of active service on 17 November 1997. On 14 October 1998, you were counseled for failure to go to your appointed place of duty, for failure to get a haircut, and an unauthorized absence (UA). You received nonjudicial punishment (NJP), on 8 December 1998, for two specifications of Article 86, UA. From December of 1998 through February of 1999, you were not recommended for promotion due to lack of responsibility, dependability, judgment, and leadership. On 6 May 1999, you received a second NJP for Article 86, failure to go to your appointed place of duty. You received a third NJP, on 22 June 1999, for an additional violations of Article 86, unauthorized absence, as well as Article

128, assault, and Article 134, issuing multiple checks with insufficient funds. Following this third NJP, you were processed for administrative separation by reason of misconduct due to minor disciplinary infractions. You waived your right to consult legal counsel or to request an administrative hearing and, on 8 October 1999, you were discharged with an Other Than Honorable (OTH) characterization of service. In 2008, you sought review from the Naval Discharge Review Board, contending you suffered from post-traumatic stress disorder (PTSD) prior to your discharge; however, the NDRB found no evidence of a diagnosis nor did you provide in-service health records or post-service medical records for review.

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 as well as your contentions that you incurred PTSD after being assaulted by a group of civilians in July of 1999; this assault resulted in your unauthorized absence, need for mental health care, and PTSD diagnosis. The Board also considered your claim that your misconduct occurred after being mistreated upon your return from hospitalization, to include being required to perform degrading duties. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Because you contend a mental health condition, the Board also considered the AO, which noted in pertinent part:

Among the available documents, there is no evidence that the Petitioner was diagnosed with a mental health condition during military service. Throughout his military processing, there were no concerns raised of a mental health condition that required evaluation. Post-service, he has received a diagnosis of PTSD, which he claims was incurred during military service. However, this diagnosis is temporally remote from his military service and medical records do not indicate the traumatic event. Additionally, it is not possible to attribute his misconduct to unrecognized symptoms of PTSD, as the majority of his misconduct occurred prior to the purported assault in July 1999. Additional records (e.g., post-service 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact is showed a complete disregard for military authority and regulations. Further, the Board considered that you were counseled on multiple occasions and provided opportunities to correct your deficiencies. Finally, the Board concurred with the AO, noting that documentation of your misconduct began as early as October of 1998 and occurred with routine frequency from that point until your discharge. Based on this

finding, the Board agreed 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. 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, the Board determined that your request does not warrant relief.

You are entitled to have the Board reconsider its decision upon the 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 is attached 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,

6/27/2022

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Executive Director

Signed by: █