



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: 0608-22
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 limitation 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 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, 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 an advisory opinion (AO) from a qualified mental health professional. A copy of the AO was provided to you for comment but you chose not to do so.

You enlisted in the U.S. Marine Corps Reserve (USMCR) and completed a period of active duty for training with an honorable (HON) characterization of service on 29 April 1976. You subsequently and consecutively completed three additional periods of HON service in the U.S. Marine Corps (USMC). On 3 February 1986, you reenlisted for a final time. On 23 April 1987, you were found guilty at a summary court-martial (SCM) of two specifications of unauthorized absence (UA) and for being unfit for duty due to alcohol intoxication. You were sentenced to be restricted for a period of 60 days, to forfeit \$874.00 pay per month for two months, to be reduced in rate to E-5, and to be issued a letter of reprimand (LOR). On 28 April 1987, the Convening Authority approved all of your sentence but the restriction and LOR. At the time of your SCM you were pending civilian charges of assault upon two █, police officers,

who were executing their duties. On 29 April 1987, you were notified of separation proceedings for administrative discharge and advised of your procedural rights. You elected your right to consult with military counsel and waived your right to present your case at an administrative discharge board. Your notification of discharge further documented you completed Level III alcohol rehabilitation treatment. On 30 April 1987, your commanding officer recommended to the separation authority that you be discharged with an Other Than Honorable (OTH) characterization of service by reason of misconduct due to commission of a serious offense (COSO). In May 1987, the separation authority directed you be discharged with an OTH by misconduct based on COSO and, on 22 May 1987, you were so discharged.

The Board carefully considered all potentially mitigating factors in your petition to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. In your petition you contend; (1) you received two HON discharges prior to your final discharge, (2) you received four Meritorious Promotions up to the rank of Staff Sergeant/E-6, (3) you received the Navy Achievement Medal for service as an 8511/Drill Instructor and an 8512/Senior Drill Instructor, (4) you trained 10 platoons of over 600 Marines and set the RTR (Recruit Training Regiment) record for Final Drill, (5) you had a hard time adjusting to your return from FMF and you developed an alcohol problem, (6) you request that your characterization of service be judged in its entirety and not be blemished by your final discharge, (7) your “delay in discovery of more than three years” is because you felt you could not dispute your discharge/characterization of service at the time, and (8) following your discharge you spent seven years managing footlockers, two years as a Chevrolet Sales Manager, and have been a productive member of society. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

In connection with your assertion that you suffered from a mental health condition (MHC), the Board requested, and reviewed, the AO. The AO reviewed your service record as well as your petition and the matters that you submitted. According to the AO:

In service, the Petitioner was diagnosed with alcohol use disorder. This is a condition that existed prior to enlistment, as evidenced by his pre-service alcohol use. Problematic alcohol 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 effects of excessive alcohol consumption, there is no evidence he was unaware of the potential for misconduct when he began to drink or was not responsible for his behavior. His personal statement is not sufficiently detailed to establish an alternate clinical diagnosis or a nexus with his misconduct. Additional records (e.g., the Petitioner’s service record or 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, “based on the available evidence, it is my clinical opinion that there is insufficient evidence of a mental health condition that may have attributed to military service.

There is insufficient evidence that his misconduct could be attributed to a mental health condition.”

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. These included, but were not limited to, your contentions noted above and your desire to change your final discharge from OTH to HON. Specifically, the Board determined that your misconduct, as evidenced by your SCM and civilian charges, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the negative impact it had on the good order and discipline of your unit. In addition, the Board considered the prejudicial nature of your civilian misconduct had on the Marine Corps. Furthermore, the Board considered that you already received four Certificates of Release or Discharge from Active Duty (DD 214s) for your previous periods of Honorable service. Finally, the Board concurred with the AO that there was insufficient evidence that your misconduct could be attributed to a mental health condition. 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,

6/13/2022

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Executive Director

Signed by: █