



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: 652-22

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 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 11 July 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, applicable statutes, regulations, and policies, to include the SECDEF Memo of 3 Sep 14 (Hagel Memo), USD Memo of 25 Aug 17 (Kurta Memo), and USD Memo of 25 July 18 (Wilkie Memo). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional dated 31 March 2022, 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 and began a period of active duty on 19 February 1976. From a period beginning on 28 June 1976 to 31 May 1977, you received nonjudicial punishment (NJP) in seven occasions for the following offenses: unauthorized absence (UA) from appointed place of duty, sleeping on watch, disrespectful in language, disobeying a lawful order, assault on a civilian, drunk and disorderly conduct, and failure to obey a lawful order. On 20 May 1977, you were diagnosed by a medical officer with schizoid personality disorder with persuasive anti-social traits. On 7 November 1977, you began a period of UA which lasted six-days, 23 hours, and 59 minutes. On 15 November 1977, you received an eighth NJP for a period of UA. On 22 December 1977, you began a second period of UA which lasted 15 days. On 23 January 1978, you began a third period of UA which lasted 92 days. On 9 May 1978, you were recommended

for trial by summary court martial (SCM) for three periods of UA. As a result of the foregoing, you requested an undesirable discharge in lieu of trial by court martial. On 12 June 1978, the discharge authority approved your request and ordered an Other Than Honorable (OTH) discharge characterization of service in lieu of trial by court martial. On 28 June 1978, you were discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for an upgraded characterization of service. The NDRB denied your request on 14 February 1980. On 13 September 2006, this Board denied your request for a discharge characterization upgrade. Your request for reconsideration was also disapproved on 29 June 2007.

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 for a discharge upgrade and contentions that your discharge was the result of an administrative error and mistakes in your records. The Board noted you submitted numerous documents from the Department of Veterans Affairs (VA) to be considered. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner's OMPF did contain evidence of a diagnosis of a mental health condition (Schizoid Personality Disorder). Evidence submitted by Petitioner supported post-discharge diagnoses of depression and anxiety. As noted previously, Schizoid Personality Disorder and depression/anxiety have overlapping symptoms and it would be speculative to try to differentiate what misconduct/behaviors would be attributed to which disorder, particularly since the OMPF has few details regarding the misconduct. Petitioner noted he began drinking heavily to cope with his circumstances and perhaps his drunk and disorderly could be attributed to his MHC; however, misconduct such as leaving the rifle range in his personal vehicle versus in formation with his unit would not be attributable to a MHC. Petitioner's misconduct, unauthorized absences after August of 1977, would not be attributed to his MHC. Petitioner stated several times his leaving without permission was intentional to take care of the woman who raised him and that he would continue to do so until he was discharged.

The AO concluded, "[b]ased on the available evidence, it is my clinical opinion Petitioner's MHC can be attributed to his military service. Additionally, some of Petitioner's misconduct may be attributable to his MHC."

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 and request to be discharged in lieu of trial by court-martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct shows a complete disregard for military authority and regulations. In addition, the Board found no evidence to support your assertions of error with

your NJPs. The Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Further, while the Board took into consideration the AO finding that there was evidence that some of your misconduct could be attributed to a mental health condition, the Board concurred with the AO that some of your more serious offenses, such as sleeping on post or going UA for a long period, were not the result of your mental health condition. Therefore, the Board determined the severity of these offenses were not offset by the mitigation evidence. 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 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 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,

7/27/2022

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Deputy Director

Signed by: █