



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: 722-22
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 17 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) of a qualified mental health provider, which was previously provided to you. You were afforded an opportunity to submit a rebuttal, but did not.

You enlisted in the Marine Corps with a drug use waiver and began a period of active service on 4 September 2002. In October 2003, you received nonjudicial punishment (NJP) for violations of Article 86, absence from your appointed place of duty, and Article 92, violation of a lawful general order due to traveling out of bounds. You received a second NJP the following month for two counts of restriction breaking by not remaining in your restriction room as required while on restriction and for possessing items in your room which were contraband while in a restriction status. As a result, you spent 30 days in correctional custody. You were counseled, in April 2004, for unsatisfactory personal hygiene, failure to secure your room, and failure to obey uniform regulations after wearing utility trousers and combat boots while in town. You were

counseled in September 2004, after discovering lost or stolen gear, for failing to properly inventory your personal and issued military property items upon receipt from correctional custody; however, you reimbursed the government for the missing property. You received a third NJP, in February 2005, for a violation of Article 92 after disobeying a lawful order. You were counseled again, in June 2005, for multiple instances of unauthorized absence from various places of duty. On 7 October 2005, you were convicted by a Special Court-Martial (SPCM) for two specifications of unauthorized absence, wrongful use and possession of marijuana, and missing movement. After consultation with qualified defense counsel, you elected to plead guilty pursuant to a pre-trial agreement which limited your potential confinement period but did not protect from a punitive discharge. After presentation by your defense counsel of any matters in extenuation or mitigation of your sentence, you were adjudged a Bad Conduct Discharge (BCD) in addition to 100 days of confinement, reduction to E-1, and forfeitures of pay. After consultation with counsel, you also elected to waive the submission of matters in clemency with respect to your adjudged sentence. Appellate review of your trial proceedings found no error and you were discharged, on 27 November 2006, with a BCD as adjudged.

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 to “Honorable” and your contentions that you served honorably but had a mental health condition which caused in-service conduct problems, for which you believe you should have received administrative separation and eligibility for benefits rather than a punitive discharge. 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 stated in pertinent part:

Unfortunately, Petitioner did not provide clarifying information about the trauma related to his PTSD or information about his MHC (i.e., when the trauma occurred, symptoms experienced, MHC diagnosis). The lack of clarifying information made available did not provide enough markers to establish an onset and development of mental health symptoms or identify a nexus with his misconduct. Should the Petitioner choose to submit additional clarifying information, it will be reviewed in context of his claims.

The AO concluded, “[b]ased on the available evidence, it is my considered clinical opinion, that there is insufficient evidence to establish if Petitioner’s PTSD can be attributed to military service, if his purported mental health condition can be attributed to military service, or if his in-service misconduct/behavior can be attributed to PTSD or other mental health condition.”

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 SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct, the fact it included a drug offense, and the negative impact it likely had on the good order and discipline of your unit. Ultimately, the Board found that your conduct showed a complete disregard for military

authority and regulations. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD. 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 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, _____

7/5/2022

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Executive Director

Signed by: █