



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: 0833-22
4852-21
Ref: Signature Date

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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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 1 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 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 an advisory opinion (AO) from a qualified mental health professional dated 30 March 2022, which was previously provided to you.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You previously applied to this Board for an upgrade to your characterization of service and were denied on 20 September 2021. Before this Board's denial, the Naval Discharge Review Board also denied your request for relief in August 1983.

You enlisted in the Marine Corps and began a period of active duty on 7 February 1980. On 18 November 1981, you received non-judicial punishment (NJP) for failure to go at the time prescribed to your appointed place of duty. On 3 March 1982, you were convicted by a summary court-martial (SCM) of failure to go at the time prescribed to your appointed place of duty and wrongful possession of marijuana. On 27 April 1982, you received your second NJP for absence from your appointed place of duty.

On 5 May 1982, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to drug abuse. You were advised of, and elected your procedural right to consult with military counsel. After consulting with military counsel, you elected to waive your right to present your case to an administrative discharge board (ADB). Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Marine Corps with an Other Than Honorable (OTH) characterization of service. The SA approved the CO's recommendation and directed your OTH discharge from the Marine Corps by reason of misconduct due to drug abuse. Prior to your administrative discharge, on 13 July 1982, you received your third NJP for two specifications of unauthorized absence and two specifications of absence from your appointed place of duty. On 16 July 1982, you were discharged from the Marine Corps with an OTH characterization of service.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 30 March 2022. The AO noted in pertinent part:

During military service, the Petitioner was diagnosed with substance use disorder. Substance use is incompatible with military readiness and discipline and considered amenable to treatment, depending on the individual's willingness to engage in treatment. The Petitioner's substance use predated his military service. Unfortunately, the medical records provided by the Petitioner and his personal statement are not sufficiently detailed to establish a clinical diagnosis or provide a nexus with his misconduct. The evidence is temporally remote from his military service, and nonspecific. 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 mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed a mental health condition, other than a potential substance use disorder."

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 character of service and contentions that you were a victim of prejudice, harassment, and racial hatred from your superiors, that the harassment you received led to your anxiety and mental health troubles, which was the reason for your drug use, that you do not feel you should have been "dishonorably"

discharged and should have received a “general discharge under mental conditions,” and that if you would have received true counseling and not had to deal with all the racial abuse, you would have been able to do your four years with honor. For purposes of clemency consideration, the Board noted you provided advocacy letters but not supporting documentation describing post-service accomplishments.

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your three NJPs and SCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your record of misconduct showed a complete disregard for military authority and regulations. While the Board considered your advocacy letters and commended your post-discharge good character, they ultimately concluded that it was insufficient mitigation evidence to outweigh your misconduct. The Board was not persuaded by your arguments of mistreatment and noted you did not provide any evidence to substantiate your allegations. In addition, the Board concurred with the AO and determined that there is insufficient evidence that your misconduct could be attributed to a mental health condition, other than a potential substance use disorder. As a result, the Board determined 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 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,

6/14/2022

