



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: 922-22
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 limitations 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 13 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, 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. Although you were afforded an opportunity to reply, you chose not to do so.

You enlisted and began a period of active duty in the Marine Corps on 22 August 1980. On 5 August 1983 you received nonjudicial punishment (NJP) for a two day unauthorized absence (UA) and testing positive for cannabinoid in violation of Articles 86 and 134, Uniform Code of Military Justice. You entered an additional period of UA from 9 September 1983 to 23 January 1984 for a total of 136 days. Charges for the UA were preferred against you and, on 8 February 1984, you submitted a request for separation in lieu of trial by court martial (SILT). Your commanding officer recommended you be discharged with an Other Than Honorable (OTH) characterization of service. On 17 February 1984, the staff judge advocate found your proceedings

to be sufficient in law and fact, and you were discharged, on 5 March 1984, with an OTH characterization of service.

You contend that your discharge is improper because you were attacked by three Marines in 1982 while at Camp Pendleton. You state your roommates were stealing money from your wallet while you slept. You state the thefts occurred for approximately one month. You further state you confronted the individuals, they went to the bachelor enlisted quarters, attacked you, and you woke up in the emergency room at the Naval Hospital. You contend you were hit with a blunt instrument, suffered head trauma, incurred PTSD, and were in intensive care for three days. You state that after you were released from the hospital, you were sent to Okinawa, could not stand your post, and returned to ██████████. You further state you did not know you suffered from PTSD until 2018. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

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 contentions noted above and desire to upgrade your discharge. The Board also relied on the AO in making its determination. The AO noted in pertinent part:

The Petitioner's complete service medical record was not available for review. Among the available records, there is no evidence that he was diagnosed with a mental health condition during military service. He has provided no post-service medical evidence to support his claims. Unfortunately, his personal statement is not sufficiently detailed to establish a clinical diagnosis or a nexus with his misconduct. 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 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 that the potentially mitigating factors in your case were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and significant period of UA that resulted in your SILT request, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and that it included a drug offense. 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,

6/4/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]