



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: 1185-22
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 6 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 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, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

During your enlistment processing you disclosed minor infractions, specifically four speeding tickets and a minor in possession of alcohol. You paid the required fines and were granted an enlistment waiver.

You enlisted in the Marine Corps and began a period of active duty on 2 February 1987. On 19 May 1987, you received your first nonjudicial punishment (NJP) for sleeping while posted as a sentinel. You were also issued an administrative counseling documenting the aforementioned deficiencies in your performance and conduct, advising you that further disciplinary infractions or continuance of deficient performance may result in disciplinary action and/or processing for

administrative discharge. On 5 October 1987, you were counseled concerning your failure to maintain your personal weapon during scheduled weapons care and cleaning and again chose not to make a statement in rebuttal. On 15 December 1988, you received a second NJP for failing to go at the time prescribed to barracks security watch and, while posted as a sentinel, found sleeping on post. Your official military personnel file (OMPF) captures additional administrative entries from April 1988 to July 1988 for a multitude of reasons to include; you were eligible but not recommended for promotion due to your NJP, your frequent involvement with military/civilian authorities, and your financial irresponsibility by not having sufficient funds to cover checks. Although afforded opportunities to submit matters in rebuttal subsequent to each counseling session, you chose not to do so. On 16 November 1988, you received a third NJP for an unauthorized absence (UA) totaling five days and for wrongfully wearing an earring in your ear. On 12 January 1989, you were notified of your pending administrative separation as a result of misconduct due to minor disciplinary infractions, at which time you waived your right to consult with military counsel and to have your case heard at an administrative discharge board. On 12 April 1989, your commanding officer (CO) recommended to the separation authority that you be discharged with an Other Than Honorable (OTH) for misconduct due to minor disciplinary infractions. On 31 January 1989, a staff judge advocate's review of your case proceedings found them to be sufficient in law and fact. Also on this date, the separation authority approved your CO's recommendation and, on 15 February 1989, you were discharged with an OTH for misconduct due to minor disciplinary infractions.

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 that, (1) you were suffering from an unrecognized █ during your military service which contributed to your misconduct, (2) you were diagnosed with █, (3) you are requesting an upgrade of your discharge due to the length of time that has expired since your discharge/circumstances, (4) you are not denying any of the charges that were brought against you during your service in the Marine Corps, (5) you did not realize you had mental health issues at the time of your service, (6) you regret your actions and decisions while in active service and wish you would have made better decisions, and (7) you wish you would have stayed in the Marine Corps. 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:

There is no evidence that he was diagnosed with a mental health condition in military service. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Unfortunately, he has provided no post-service medical evidence in support of his claim. His current statements are temporarily remote from military service and insufficient for a clinical diagnosis. Additional records (e.g., post-service mental health records describing 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 could be 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. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and numerous counselings, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included two offenses involving sleeping while on sentinel duty. Further, the Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Finally, the Board concurred with the AO that there is 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,

6/23/2022

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Executive Director

Signed by: █