



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

█
Docket No: 1246-22
Ref: Signature Date



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 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 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) furnished by a qualified mental health provider which was previously provided to you. You were afforded an opportunity to submit a rebuttal to the AO, but did not.

You enlisted in the Marine Corps and began a period of active service on 4 March 2008. While deployed, you were tried by Summary Court-Martial and found guilty of violations of Article 92, for violation of a lawful general order by wrongful use of inhalant substances to produce an intoxicating effect, and Article 134, for wrongful communication of a threat after stating to a corporal that you were going to put your weapon in condition one and shoot a junior marine in the head. Because you were deployed in support of combat operations, your sentence of confinement was deferred for your redeployment to the United States.

Upon being returned stateside, and with your sentence of confinement still pending, you absented yourself without authority prior from 20 May 2009 to 4 June 2009, 11 June 009 to 10 September 2009, and 11 September 2009 to 14 September 2009. After finally serving your adjudged confinement, you were notified of administrative separation for commission of a serious offense and misconduct due to drug abuse. You waived your right to a hearing before and administrative board and, following screening for any potential post-traumatic stress disorder or traumatic brain injury, your separation under Other Than Honorable (OTH) conditions was approved by the Commanding General █ Marine Division. You were discharged, on 23 June 2010, with final proficiency and conduct marks of 2.9/2.9. Post-discharge, a court ordered your involuntary psychiatric hospitalization at the request of your father due to threats of suicide and threats of harm toward your family members.

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. They included, but was not limited to, your desire to upgrade your discharge and contentions that your chain of command took advantage of your mental state and forced you to sign court-martial documents, and your evidence that the Department of Veterans Affairs (VA) has administratively determined, for its purposes, that you were insane at the time of your discharge. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

The Board notes that the VA, as an independent executive agency, exercises its own internal standard of review in rendering administrative decisions it applies to discharge determinations used distinctly for VA purposes. As such, VA determinations of character of discharge are not made under the same standard of review applied by the Board and, therefore, are not binding upon the Board.

Because you contend a mental health condition impacted the circumstances of your discharge, the Board also considered the AO, which noted in pertinent part:

Among the available documents, there is no evidence that the Petitioner was diagnosed with a mental health condition during military service. Throughout his military processing, there were no concerns raised of a mental health condition that required evaluation. Post-service, the VA has determined that the Petitioner was insane at the time of his misconduct. However, there is insufficient information regarding the Petitioner's misconduct to attribute it to a mental health condition, as it could be due to substance intoxication. While the Petitioner purportedly experienced a mental health crisis shortly after his separation from service, which resulted in a psychiatric hospitalization, he has provided no post-service medical records of a mental health diagnosis or the discharge summary report from his hospitalization to provide context to the allegations of domestic violence and bipolar disorder that occurred a year after his in-service misconduct. Additional records (e.g., post-service 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 to a mental health condition.”

After a thorough review of your record and contentions, to include the VA determination of your character of discharge and your psychiatric hospitalization shortly after your discharge, the Board concluded the potentially mitigating factors you submitted for consideration were insufficient at this time to outweigh the misconduct evidenced by your SCM conviction and subsequent multiple periods of extended unauthorized absences. In making this finding, the Board considered the seriousness of your misconduct and concluded it showed a complete disregard for military authority and regulations. Additionally, the Board considered the negative impact your conduct, more likely than not, had on the good order and discipline of your command. Further, the Board took into consideration that your misconduct included a drug related offense. 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, the Board determined that your request does not warrant 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,

5/27/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]