



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: 1566-22

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 27 April 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). Additionally, 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 an AO rebuttal, but you did not do so.

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 initially enlisted in the Marine Corps Reserve (USMCR) and commenced active duty on 29 Nov 2010. Your pre-enlistment physical examination on 24 September 2010 and self-

reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 10 July 2011, you were honorably discharged at the completion of your initial recruit training and required active service. Upon your discharge, you were initially assigned to a USMCR unit situated in the █ area.

In June 2013, your command notified you of administrative separation proceedings by reason of unsatisfactory participation in the Ready Reserve. The underlying basis for the recommendation was your failure to attend certain scheduled reserve drills and, as a result, you had accumulated nine (9) or more unexcused absences in a twelve (12) month period to deem you an unsatisfactory USMCR participant. Specifically, on 7 June 2013, your command mailed the administrative separation notification package and a corresponding acknowledgment/election of rights form to your home address via U.S. Certified Mail. The Certified Mail delivery remained unclaimed by you and, since you did not return the acknowledgment of rights form to the command on a timely basis, this acted as a waiver of your rights.

In the interim, on 1 July 2014 your commanding officer's immediate superior in the chain of command (ISIC) recommended your separation with an under other than honorable (OTH) characterization of service. The ISIC noted that you had missed a total of 49 drills. The ISIC also noted that you did not call your chain of command to inform them you would not be attending drills and that you made no attempt to reschedule any missed drills. The ISIC further noted that your command made numerous unsuccessful attempts to contact you.

On 15 July 2014, the Staff Judge Advocate at Headquarters, Fourth Marine Division determined that your separation was legally and factually sufficient. On 15 July 2014, the Separation Authority approved and directed your OTH discharge. Ultimately, on 16 July 2014, you were separated from the Marine Corps Reserve for unsatisfactory participation in the Ready Reserve with an OTH characterization of service and assigned an RE-4 reentry code. In this regard, you were assigned the correct characterization and reentry code based on your factual situation.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 10 March 2022. The Ph.D. initially observed that your service record did not contain evidence of a mental health diagnosis or a post-service PTSD diagnosis. The Ph.D. noted that you submitted evidence of a civilian psychiatric hospitalization for depression and suicidal ideation during your USMCR affiliation but determined that your depressive episode was attributed to personal stressors and not military service. The Ph.D. also noted that you attended scheduled drills after your hospitalization and determined that your personal statement was not sufficiently detailed to establish a nexus between your misconduct and your mental health conditions. The Ph.D. concluded by opining that although there was evidence you may have been experiencing a mental health condition during your USMCR service but there was insufficient evidence that you incurred PTSD during military service or that your misconduct could be attributed to PTSD or another mental health condition.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, and Wilkie

Memos. These included, but were not limited to: (a) you were subject to verbal assault and racial slurs during your initial recruit training and suffered mental trauma as a result, (b) your pistol qualification and combat fitness test scores were not properly recorded by the Marine Corps and this warranted you ineligible for promotion to Corporal, (c) you admitted yourself to a civilian hospital while still in the USMCR for mental health issues, and (d) you once had a live grenade intentionally thrown your way while you were sleeping which caused limited hearing in your left ear. However, given the totality of the circumstances, the Board determined that your request does not merit relief.

In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no nexus between any mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. The Board also concluded that although you have a 2013 civilian mental health diagnosis, your service records contemporaneous to your USMCR service lacked sufficient evidence to establish a nexus between your mental health conditions/symptoms and your misconduct. As a result, even under the liberal consideration standard the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The simple fact remains is that you failed to attend approximately 49 required scheduled drills and you were absent without legal authority, justification, or excuse. In addition, the Board considered the efforts your command made to contact you during these absences. Ultimately, the Board determined the record clearly reflected that your misconduct was willful and intentional and demonstrated you were unfit for further USMCR service. The Board also determined that you did not provide convincing evidence to corroborate or substantiate your contentions of harassment, assault, or maltreatment. Therefore, the Board concluded that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions.

Additionally, the Board 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. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. Lastly, absent a material error or injustice, the Board generally will not summarily upgrade a discharge and/or change a reentry code solely for the purpose of facilitating VA benefits and medical treatment, or enhancing educational or employment opportunities, including military enlistments. The Board carefully considered any matters submitted regarding your post-service conduct and accomplishments, however, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that given the totality of the circumstances your request does not merit relief.

Accordingly, the Board determined that there was no impropriety or inequity in your discharge and reentry code, and the Board concluded that your misconduct clearly merited your OTH discharge and RE-4 reentry code.

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,

5/1/2022

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Executive Director

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