



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: 1771-22
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 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider, 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 into the Marine Corps, you disclosed using marijuana once as well as a history of minor traffic infractions for which you paid fines. An enlistment waiver was granted and you began a period of active duty on 19 October 1988. On 27 March 1990, you received a counseling warning retaining you in the naval service but documenting your infractions of driving under the influence, drinking underage, and failure to obey traffic regulations of the state of █ and the Marine Corps Base. Additionally, this counseling advised you that further disciplinary infractions or continuation or deficient performance may

result in disciplinary action and/or in processing for administrative discharge. On 8 November 1990, you received your first nonjudicial punishment (NJP) for violated a written order by driving on base while on a suspension and revocation of your license. On 29 January 1991, you received a second NJP for a period of unauthorized absence (UA) and missing ship's movement. On 7 February 1992, a substance abuse officer medical evaluation found you were psychologically dependent on alcohol but not on drugs. On 13 May 1992, you received a third NJP for another period of UA. You were again issued a counseling/warning on 26 May 1992, regarding your lack of judgement and frequent involvement with civilian and military authorities. On 17 June 1992, you received a fourth NJP for the wrongful use of THC/marijuana. As a result, you were notified of your commanding officer's (CO) intent to recommend to the separation authority that you be discharged for misconduct, drug abuse, at which time you waived all of your procedural rights. On 16 July 1992, a staff judge advocate's review of your case found the proceedings to be sufficient in law and fact. Subsequently, on 21 July 1992, the separation authority directed you be discharged with an Other Than Honorable (OTH) characterization of service by reason of misconduct due to drug abuse. You were so discharged on 24 July 1992.

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 and contention that you incurred PTSD from military service, which might have mitigated your discharge character of service. In addition, you requested the Board take into consideration your past operational experiences and record of active duty service. 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 PTSD, the Board requested, and reviewed, the AO. According to the AO:

During military service, the Petitioner was diagnosed with an alcohol use disorder and a substance use disorder. Substance use and problematic alcohol use are incompatible with military readiness and discipline and considered amenable to treatment, depending on the individual's willingness to engage in treatment, but do not remove personal responsibility from behavior. The Petitioner was also diagnosed with a Situation Adjustment Disorder, which appears to have developed in response to his pending administrative separation. Unfortunately, he has provided no medical records to support his claims of PTSD. His personal statement is temporally remote from his service and not sufficiently detailed to establish a clinical diagnosis or a nexus with his misconduct. Additional records (e.g., mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to PTSD."

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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct, that included a drug offense, and the fact you were counseled on multiple occasions regarding your conduct. Further, the Board took into consideration the likely negative impact your misconduct had on the good order and discipline of your unit. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct may be attributed to PTSD. 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,

7/14/2022

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Executive Director
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