



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: 1879-22
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 20 July 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 SECDEF Memo of 3 September 2014 (Hagel Memo), USD Memo of 25 August 2017 (Kurta Memo), and USD Memo of 25 July 2018 (Wilkie Memo). The Board also considered an advisory opinion (AO) from a qualified mental health professional dated 17 May 2022. Although you were provided an opportunity to comment on the AO, 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 entered active duty with the Marine Corps on 22 February 1989. According to the information in the record, you entered a period of unauthorized absence (UA) on 1 November 1989 until 21 November 1990. As a result, you submitted a written request for discharge for the good of the service (GOS) to avoid trial by court-martial.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your record reveals that your request for separation in lieu of trial by court-martial was approved in January 1991 and you were separated from the Marine Corps with an Other Than Honorable (OTH) characterization of service.

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 following a physical assault during your military service and also suffered from a preexisting injury that caused you pain during your training. For purposes of clemency consideration, the Board noted you provided no supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 17 May 2022. The AO stated in pertinent part:

Among available documents, there is no evidence that Petitioner was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He has provided no medical records 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) 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 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your significant period of UA and subsequent request to be discharged for the GOS, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and determined that your conduct showed a complete disregard for military authority and regulations. In addition, the Board concurred with the findings of the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. The Board also noted that there is no evidence in your record, and you submitted none, to support your contention of being assaulted or that you were suffering from a preexisting injury while on active duty. Finally, the Board considered that you already received a large measure of clemency and mitigation of your misconduct when the Marine Corps agreed to discharge you for the GOS, thereby sparing you the stigma of a court-martial conviction and likely punitive discharge. 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, _____

7/28/2022

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Deputy Director

Signed by: █