



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: 1972-22
10697-09
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 limitations 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 3 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health provider and the documents you submitted in rebuttal.

You enlisted and began a period of active duty in the Marine Corps on 9 April 1979. On 7 February 1980, you received nonjudicial punishment (NJP) for consuming alcohol in an unauthorized area, the Bachelor Enlisted Quarters, in violation of Article 92, Uniform Code of Military Justice (UCMJ). Your second NJP occurred, on 13 May 1980, for being incapacitated for the proper performance of duties as firewatch, disobeying a lawful order from a Sergeant to get out of the rack, and failure to go to your appointed place of duty and being absent from your appointed place of duty. These offenses were in violation of Articles 134, 91, and 86, UCMJ. You were formally counseled on 29 May 1980 concerning your declining conduct and recurring incidents of alcohol abuse. On 13 June 1980, you received a third NJP for sleeping on post as firewatch in violation of

Article 113, UCMJ. On 29 May 1981, you were convicted by special court martial (SPCM) for wrongful appropriation of a van belonging to a Gunnery Sergeant. This offense was in violation of Article 121, UCMJ. You were sentenced to confinement at hard labor for 45 days, forfeiture of \$60 pay per month for six months, and reduction in rank to the pay grade E-1. Your fourth NJP occurred, on 22 September 1981, for being absent from your appointed place of duty, firewatch, in violation of Article 86, UCMJ. On 9 March 1982, you were convicted at a second SPCM for a two hour unauthorized absence and for failure to go to your appointed place of duty in violation of Article 86, UCMJ. You were also convicted of wrongful possession of 84.5 grams of marijuana, wrongful transfer of marijuana, and wrongful sale of marijuana in violation of three specifications of Article 134, UCMJ. You were sentenced to confinement at hard labor for four months, forfeiture of \$367 pay per month for six months, and to be discharged with a bad conduct discharge (BCD). On 20 December 1982, the Court of Military Review affirmed the findings and sentence. You were discharged, on 10 May 1983, with a BCD.

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 contentions that you have been diagnosed with PTSD and Bipolar Disorder and since realized that the actions that led to your discharge were due to your mental state. You also contend the Bipolar diagnosis was drug and alcohol induced, and you were never exposed to drugs until you transferred to Camp Pendleton. You further contend the drug exposure escalated while you were in Okinawa and Camp Lejeune. You argue that you have continually sought help and established proper support, successes, boundaries, and proper health care. You state your conditions started and were also aggravated while in-service. Finally, you contend that you grew up in an abusive mixed-race family and the racism you experienced in the Marine Corps exacerbated the mental health conditions you incurred as a child. For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments and advocacy letters.

Based on your assertions of a mental health condition, the Board requested the AO in making its determination. The AO noted in pertinent part:

Among the available documents, there is no evidence that the Petitioner was diagnosed with PTSD or another mental health condition during military service. Post-service, the Petitioner has received treatment for substance use disorder from VA-affiliated services. Substance use disorder is incompatible with military readiness and discipline and considered amenable to treatment, depending on the individual's willingness to engage in treatment, and the Petitioner's problematic substance use pre-dated his military service. Post-service, the Petitioner has also received diagnoses of PTSD and bipolar disorder. Unfortunately, the medical records and his personal statement are not sufficiently detailed to provide a nexus with his misconduct. The evidence is temporally remote from his military service and nonspecific, particularly give pre-service behavior. 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 diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed PTSD or another mental health condition.”

In response to the AO, you provided documentation supporting your post-discharge PTSD diagnosis and treatment along with a character reference and personal statement clarifying the circumstances of your case.

Based upon this review, the Board concluded that the potentially mitigating factors in your case were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your four NJPs and two SPCMs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. Further, the Board noted that your conduct showed a complete disregard for military authority and regulations. In its deliberations, the Board commended your post-service accomplishments and positive rehabilitation progress. However, ultimately, they determined it was insufficient evidence to mitigate the seriousness of your misconduct. In making their finding, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed PTSD or another 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 a BCD. 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,

6/27/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]