



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: 2080-22
7484-06
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 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 29 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, the documents submitted in rebuttal, and subsequent AO.

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 enlisted and began a period of active duty in the Marine Corps on 1 December 1977. You entered a period of unauthorized absence (UA) from 22 May 1978 to 7 August 1978. On 29 September 1978, you were convicted by summary court martial (SCM) for the 77 day period of UA in violation of Article 86, Uniform Code of Military Justice (UCMJ). On 9 April 1979, you were admitted to the psychiatric unit, diagnosed with Inadequate Personality that existed prior to entry, and recommended for administrative separation processing as unsuitable. On 7 June 1979, you received nonjudicial punishment (NJP) for a 2.5 hour UA in violation of Article 86, UCMJ. On 19 June 1979, you were re-evaluated by psychiatry and your previous diagnosis of Inadequate Personality was endorsed. You were recommended for an expeditious discharge and separated from the service, on 1 August 1979, with a General (Under Honorable Conditions) 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, your post-service accomplishments, and contentions that you entered a UA status because your mother had cancer and a good friend stole your car, resulting in emotional distress, that the Marine Corps asked you to serve as an interpreter but you had already been discharged and could not reenlist, that you were unaware of the repercussions of not requesting a trial, and that you suffered emotional distress and should have received rehabilitation treatment. For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments and an advocacy letter.

Based on your assertion of PTSD, the Board considered the AO in making its determination. The AO noted in pertinent part:

During military service, the Petitioner was diagnosed with a personality disorder, indicating characterological features rendering military service unsuitable to him. He was appropriately referred for psychological evaluation during his enlistment, properly evaluated, and his diagnosis was based on observed behaviors and performance during his military service, the information he chose to disclose to his clinician, and the psychological evaluation performed by the mental health clinician. Unfortunately, he has provided no medical records to support his claims of PTSD and depression. His personal statement is temporally remote from his service and not consistent with his service record. It is 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 he may have been experiencing another mental health condition, other than his in-service diagnosed personality disorder, during military service. There is insufficient

evidence that his misconduct may be attributed to PTSD or another mental health condition, other than his personality disorder.”

In response to the AO, you provided additional medical evidence that was received on 16 June 2022.

As a result, a subsequent AO was issued that stated in pertinent part:

This Advisory Opinion (AO) Rebuttal Response, like the previous AO, reference (a), will only address the mental health claims by Petitioner. The additional evidence supports a post-service diagnosis of PTSD that has been attributed to military service. It is possible that the behavior that was considered as symptoms of a personality disorder during military service has been conceptualized as symptoms of PTSD by his civilian provider.

The subsequent AO concluded, “I have reviewed Petitioner’s additional documents. Original Advisory Opinion is amended as follows: Based on the available evidence, it is my clinical opinion that there is post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is post-service 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 SCM and NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and weighed it against your overall record of service. Specifically, the Board considered the length of your UA period and its likely negative impact it had on the good order and discipline of your unit. Further, in its deliberations, the Board disagreed with the AO and concurred with the diagnosis rendered in 1979 by the medical officer while you were in-service. The Board took into consideration that you were appropriately referred for psychological evaluation during your enlistment and evaluated by qualified medical personnel. Furthermore, the Board noted that your diagnosis was based on observed behaviors and performance contemporaneous with your military service, you were diagnosed twice with the same Personality Disorder that existed prior to entry, and you were evaluated a few months prior to your discharge. Therefore, the Board determined there was insufficient evidence that your misconduct may be attributed to PTSD or another mental health condition, other than your personality disorder. As a result, the Board concluded that significant negative aspects of your service outweighed the positive aspects and continue to warrant a General (Under Honorable Conditions) 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,

7/20/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]