



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. 2300-22

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 10 March 2023. 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, 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)/mental health condition (MHC) (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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 22 June 2022. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the U.S. Selected Marine Corps Reserve (SMCR). On 11 October 1994, you entered an initial period of active duty for training and completed it on 25 March 1995. Per your SMCR contract, you committed to an obligation of eight (8) years as a reservist. Your obligation included six (6) years in a drill status and two (2) in a non-drill status, making 7 July 2002 the end of your contract date. On 23 December 1996, you were counseled for failing to report for scheduled drills. Specifically, a career retirement credit record captures you did not receive active duty points for two (2) unsatisfactory annual participation periods for calendar years 1996 and 1997. As a result of your failed participation, you were discharged on 3 April 1998 with an

Other Than Honorable (OTH) characterization of service by reason of unsatisfactory participation in the ready reserve.

The Board carefully weighed all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to upgrade your discharge and your contentions that you incurred a mental health condition (MHC) during military service, your reasons for your unsatisfactory participation, your remorse, and assertions of post-discharge accomplishments. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

Based on your assertions that you incurred a mental health condition (MHC) during your military service, which might have contributed to your discharge characterization of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

There is no evidence Petitioner was diagnosed with a mental health condition during his service or post-service. He did not provide any mental health/medical documentation to support his claim. In contrast, Petitioner attributed his misconduct to the susceptibility of young love. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific self-medication role) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a MHC that can be attributed to military service, or that his in-service misconduct could be attributed to a MHC."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your unexcused absences and unsatisfactory participation in the SMCR, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board was not persuaded by your arguments in mitigation and concluded that you were properly discharged based on your failure to meet your contractual obligations to the Marine Corps. Finally, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to your military service or your misconduct. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. Even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. 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 the 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 is attached 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,

3/23/2023



Executive Director

