



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

██████████
Docket No. 2572-22
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 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 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 19 May 2022. Although you were provided an opportunity to comment on the AO, you did not do so.

You entered active duty with the Marine Corps on 6 October 1977. On 28 April 1979, you received non-judicial punishment (NJP) for sleeping on post. During the period from 1 to 5 March 1980, you were in an unauthorized absence (UA) status for four days. On 10 April 1980, a summary court-martial (SCM) convicted you of absence from appointed place of duty, disrespect toward a non-commission officer (NCO), and failure to obey a lawful order. On 24 June 1980, you received an additional NJP for absence from appointed place of duty and two specifications of disobeying a lawful order. On 5 November 1980, a SCM convicted you of seven specifications of absence from appointed place of duty and disrespectful in language toward an NCO. Subsequently, you were notified of pending administrative separation action by reason of frequent involvement. After waiving your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to

frequent involvement with an Other Than Honorable (OTH) characterization of service. However, on 2 December 1980, you were convicted by a SCM for sleeping on post. On 23 December 1980, the SA approved the CO's recommendation and, on 30 December 1980, you were discharged.

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 during military service, which might have mitigated your discharge character of service. For purposes of clemency consideration, the Board noted you did not provide 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 19 May 2022. The AO stated in pertinent part:

There is no evidence that he 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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Although there is evidence of problematic alcohol use during his military service, there is no evidence that he was unaware of his misconduct or not responsible for his actions. Post-service, he has received diagnoses of PTSD and Bipolar I Disorder that are temporally remote from military service and do not appear to be pertinent. Unfortunately, the Petitioner's personal statement and the available records are not sufficiently detailed to establish a relationship to his military service or provide 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 a diagnosis of PTSD or another mental health condition that could be attributed to military service. There is insufficient evidence that his misconduct could be attributed to PTSD or another mental health condition."

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 two NJPs and three SCMs outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and determined your conduct showed a complete disregard for military authority and regulations. Further, the Board considered the likely negative impact your conduct had on the good order and discipline of your unit. The Board noted that, even as you were being processed for administrative separation, you continued to commit serious misconduct. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD or another mental health condition. As a result, the Board concluded your conduct was a significant departure from that expected from a Marine and your OTH discharge remains appropriate. 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 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

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