



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

█
Docket No: 2653-22
Ref: Signature Date

█
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 Board waived the statute of limitation 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 8 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 the 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 to 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) of a qualified mental health provider which was previously provided to you. You were afforded an opportunity to submit a rebuttal, but did not do so.

Prior to enlisting in the Navy, you served on active duty in the U.S. Air Force from 24 July 1979 through 1 April 1985 and were honorably discharged in the grade of E-5, within 30 days of your expiration of service. You enlisted in the Marine Corps after a single day break in service and began a period of active duty in the adjusted entry grade of E-4 on 3 April 1985. Although your record reflects otherwise positive performance and conduct for your first 18 months, you received unaccompanied, overseas orders and refused to execute those orders, missed movement (a violation of Article 87), and remained in an unauthorized absence (UA) status from 27 September 1986 – 20 October 1986 (a violation of Article 86). For these offenses, you were

tried by Special Court-Martial (SPCM) on 15 December 1986. In addition to the aforementioned violations, you were also found guilty of a violation of Article 108 due to wrongfully disposing of military property while in your UA status. In addition to reduction, confinement, and forfeitures, your SPCM sentenced you to a Bad Conduct Discharge (BCD). Your conviction and sentence was affirmed upon appellate review, and you were discharged from the Marine Corps with a BCD on 3 March 1988. Although you had expressly waived your clemency and parole board rights prior to your discharge, the Clemency and Parole Board reviewed your case and, on 12 May 1988, denied both clemency and restoration.

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 Marine Corps discharge and your contentions that you suffered from anxiety and depression due to a traumatic experience during your service in the U.S. Air Force and, because you relied on your spouse for support but received unexpected unaccompanied orders, could not face executing orders overseas without her support. The Board also noted your contentions regarding your representation by your detailed defense counsel, who you believed was trying to get your charges nullified or dropped, but whom you state you did not hear from again. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Because you contend you suffered a mental health condition which might mitigate your in-service misconduct, the Board also considered the AO. The AO stated in pertinent part:

The Petitioner's service record is poorly legible and incomplete. Among available records, 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. Post-service, the VA has determined service connection for a mental health condition that is related to his Air Force service. Unfortunately, the Petitioner's personal statement and the VA records are not sufficiently detailed to provide a nexus with his USMC misconduct. The Petitioner's statement is that his UA was due to poor information regarding USMC benefits, and there is no evidence he was unaware of the misconduct or not responsible for his decisions. Further, it is difficult to consider how wrongful disposal of military property is related to a mental health condition. 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 mental health condition that may be attributed to USMC military service. There is insufficient evidence that his USMC misconduct could be attributed to a mental health condition."

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 SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your conduct had on the good order and discipline of your unit. Further, the Board concurred with the AO regarding your contended mental health condition and, additionally, observed no irregularity in the procedure or review of your punitive discharge. 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 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,

7/20/2022

█

Executive Director

Signed by █