



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

██████████
Docket No. 2708-22
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 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 22 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 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 the advisory opinion (AO) of a qualified mental health provider dated 27 May 2022, which was previously provided to you. You were afforded an opportunity to submit a rebuttal, but did not do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 30 August 2004. Between 12 September 2005 and 14 April 2006, you received nonjudicial punishment (NJP) on three occasions: first, for Article 92 due to violation of an order prohibiting underage drinking; second, for Article 86 resulting from an unauthorized absence (UA) when you failed to attend formation and subsequently remained UA until your father confirmed on your behalf that your mother was severely ill, at which time you were placed on emergency leave; and third, for an

another Article 92 offense due to underage drinking and Article 93 violation for cruelty and maltreatment of junior Marines whose rooms you repeatedly inspected and failed from 2100 – 0300 hours at the time of your drinking offense. Subsequently, after being found guilty before Summary Court Martial (SCM) of a second Article 86 period of UA, you again absented yourself in excess of 1 year, from 10 July 2006 – 30 July 2007 before surrendering to military authorities. Following a fourth NJP for that UA period, you again absented yourself, fleeing from a restricted status, and remaining absent from 15 September – 1 October 2007. Upon your return, you were formally charged Special Court-Martial (SPCM) for both periods of UA and, after consultation with competent defense counsel, you elected to submit a request for separation in lieu of trial (SILT). The legal review of your request confirmed that you had participated in stress management and counseling sessions for post-traumatic stress disorder (PTSD) during your pre-trial confinement but without a clinical diagnosis of PTSD and without recommendation for further evaluation by your brig counselors. Accordingly, after the Commanding Officer, Marine Corps Base, ██████████ accepted your request for SILT and approved your separation under Other Than Honorable (OTH) conditions. You were discharged on 3 December 2007.

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 your contentions that you had no choice but to absent yourself because your mother had almost died and that you were suffering mental health issues after returning from Iraq and being forced to take all the blame for a hazing incident. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Because you contend that post-traumatic stress disorder (PTSD) or another mental health condition (MHC) affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

There is no evidence Petitioner was diagnosed with a mental health condition during his service. Records indicated he participated in counseling while in pre-trial confinement; however, he was not diagnosed with a mental health condition nor did the counselors facilitating the group refer him for further evaluation. It is common for confined service members to be encouraged to participate in groups to help occupy their time, as well as learn additional coping skills as coping skills can be universal for various diagnoses. In contrast, Petitioner submitted evidence of post-service diagnoses for depression and anxiety, but not PTSD. His symptoms appeared to be attributed to stress from work, not prior military service.

The AO concluded, “[b]ased on the available evidence, it is my considered clinical opinion, there is insufficient evidence of a PTSD diagnosis. There is sufficient evidence Petitioner was diagnosed with mental health conditions post-service (i.e., anxiety and depression); however, there is insufficient evidence the MHC can be attributed to military service or that his in-service misconduct could be attributed to a MHC.”

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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct that included a period of UA in excess of 12 months. In addition, the Board considered the likely negative impact your misconduct had on the good order and discipline of your unit. Further, the Board determined you already received a large measure of clemency when the Marine Corps agreed to accept your SILT request, thereby sparing you the stigma of a court-martial conviction and likely punitive discharge. Finally, the Board concurred with the AO regarding the lack of evidence supporting your contentions that your misconduct could be attributed to PTSD or another MHC. Although you have a pending appointment with Veteran Evaluation Services (VES), the Board noted that you did not submit any supplemental matters regarding post-discharge character or evidence of rehabilitation. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH 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 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,

7/29/2022

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Deputy Director
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