



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: 2740-22
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 17 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 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, which was received on 31 May 2022.

You enlisted in the Marine Corps and began a period of active service on 17 September 2001. At the time you returned from deployment to █ in July 2003, your proficiency and conduct marks were 4.4/4.5. In January of 2004, you received nonjudicial punishment (NJP) for a violation of Article 86 after failing to go to remedial physical training on four occasions. You received a second NJP, in April 2004, for Article 134 after being found unfit for duty due to drunkenness and for two additional violations of Article 86 for failure to report and missing formation. The following month, while still serving restriction from your second NJP, you received a third NJP for violating Articles 92 and 134 after breaking restriction by disobeying

your restriction orders. You received a fourth NJP, on 5 November 2004, for additional unauthorized absences and for Articles 91 and 92 after disobeying a lawful order to move your personal belongs into the barracks and displaying insubordinate conduct toward the noncommissioned officer who issued the order. Following this final NJP, you were counseled that you had demonstrated a pattern of misconduct and that further misconduct could result in administrative separation. Although you were not recommended for promotion in March 2005, you were not processed for administrative separation and, instead, permitted to serve to the completion of your required active service. Although you received final proficiency and conduct marks of 4.5/4.4, your average conduct mark during your enlistment was a 3.8 due to marks issued following your misconduct. As a result, you were discharged from active duty into the inactive ready reserve with a characterization of General (Under Honorable Conditions), consistent with applicable service policy for conduct marks below 4.0.

You previously applied to the Board, at which time you contended that you were dealing with personal issues and made mistakes but had turned yourself around after your last NJP, that you had been counseled that you were receiving higher marks than were entered into your record and believe your marks were unjustly lowered, and that you were surprised when you were issued a less than fully Honorable discharge. This Board denied your request on 27 March 2007. In 2011, you applied to the Naval Discharge Review Board similarly contending that you were told you would receive an Honorable discharge, that you were dealing with stress from personal issues which led to your alcohol abuse and misconduct, and that your post-service achievements were indicative of your true character.

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 change your reentry code as well as your contentions that you were a good Marine but suffered from mental health issues which were the root cause of your misconduct, that you have adopted a sober lifestyle, and that you've turned your life around. For purposes of clemency consideration, the Board noted you provided submitted evidence of your employment as a contract specialist with the Department of Veterans Affairs (VA), your undergraduate and graduate degrees with transcripts, your acceptance into an international honors society, your participation in a national leadership training program, and three letters attesting to your post-service character. Additionally, you provided a witness statement from a former service member who served with you and attests to the observable change in your behavior and mood following your deployment as well as your post-discharge VA diagnoses of service-connected post-traumatic stress disorder (PTSD), which the VA records identify as non-combat trauma.

Because you contend a mental health condition, the Board also considered the AO, which noted in pertinent part:

There is no evidence that he was diagnosed with PTSD or another mental health condition in military service. Post-service, the VA has determined service connection for PTSD. Unfortunately, the Petitioner's personal statement and the VA records are not sufficiently detailed to 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 post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient 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 NJPs and assigned conduct marks, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. Further, the Board concurred with the opinion of the AO that, although there is post-discharge evidence of a diagnosis of PTSD attributed to your military service, the available evidence lacked sufficient detail to identify onset or establish a nexus with your misconduct as would be necessary to assess whether your misconduct might be attributable to PTSD. With regard to your post-discharge evidence of character, the Board noted that you were permitted to serve through the completion of your contract notwithstanding being notified of a pattern of misconduct after your fourth NJPs in less than a year. In this respect, the Board concluded that you wisely accepted the opportunity offered at the time of your counseling warning, consciously refrained from further misconduct, and successfully avoided the probable adverse outcome of administrative separation proceedings, thereby earning a General (Under Honorable Conditions) discharge. Likewise, although you received conduct marks well above the 4.0 threshold during your deployment and at the time of your discharge, the Board observed that your character of discharge reflects the totality of your conduct through your enlistment, which was significantly marred by your string of NJPs during 2004. Although the Board appreciates the inroads you have made in your post-discharge career and behavior, the Board notes that the import of an Honorable characterization reflects that the quality of a member's service "is otherwise so meritorious that any other characterization would be clearly inappropriate." Applying this criterion, the Board found that significant negative aspects of your service outweighed the positive and continues 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 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, _____

7/8/2022

[REDACTED]