



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: 2743-22
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 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 31 August 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 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) furnished by a qualified mental health professional, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Marine Corps and began a period of active duty on 5 December 1989. On 4 February 1991, you were evaluated by a Physical Evaluation Board (PEB) and diagnosed with Symptomatic Pes Planus Equinus Syndrome Feet. On 6 February 1991, you received non-judicial punishment (NJP) for unauthorized absence (UA) totaling five days. On 19 February 1991, you were convicted by civilian authorities of possession of marijuana. On 14 March 1991, you received your second NJP for absence from your appointed place of duty, wrongful use of a controlled substance (marijuana and cocaine) and wrongful possession of a military identification card. On or about 5 March 1991, you submitted a written request for separation for

the good of the service (GOS) in lieu of trial by court-martial for wrongful use of marijuana. Prior to submitting this request, you conferred with a military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you admitted your guilt to the foregoing offense and acknowledged that your characterization of service upon discharge would be Other Than Honorable (OTH). The separation authority approved your request and directed your commanding officer to discharge you with an OTH characterization of service. On 19 March 1991, you were discharged from the Marine Corps with an OTH characterization of service by reason of misconduct.

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 character of service and contentions that: 1) you incurred a mental health condition after being pulled from deployment due to medical problems shortly before your units' departure and because of this you were mentally and psychologically torn; 2) your discharge should be upgraded because you were originally discharged with a medical honorable discharge by a medical board; 3) you should have been treated for mental and physical disabilities; and 4) you were treated unfairly and "thrown away like a dog." 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 27 June 2022. The AO noted in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition during military service, although there is evidence of problematic alcohol and substance use that began before enlistment. Problematic alcohol use and substance use are incompatible with military readiness and discipline and considered amenable to treatment, depending on the individual's willingness to engage in treatment. There is no evidence that he was unaware of his misconduct or not responsible for his behavior. While a disability was identified during military service, it appears that his misconduct was unrelated to this condition. Post-service, there is evidence that the VA has provided treatment for a mental health condition that is temporally remote to his military service. Unfortunately, his personal statement and available records are not sufficiently detailed to establish a relationship to his military service or nexus with his misconduct. Additional records (e.g., records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in an alternate opinion.

The AO concluded, "[b]ased on the available evidence, it is my considered clinical opinion that there is insufficient evidence of a mental health condition that may be attributed to military service, or that his misconduct could be attributed to a mental health condition."

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your civilian conviction, two NJPs, and GOS request, outweighed these mitigating

factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard of military authority and regulations. The Board also noted that the misconduct that led to your request for GOS was substantial and, more likely than not, would have resulted in a punitive discharge and extensive punishment. As a result, the Board concluded you already received significant clemency from being allowed to separate with an OTH character of service instead of risking greater punishment at a court-martial. Further, the Board concurred with the AO and determined that there is insufficient evidence of a mental health condition that may be attributed to military service, or that your misconduct could be attributed to a mental health condition. Finally, the Board concluded you were appropriately discharged pursuant to your GOS request and not eligible for a disability related processing due to your misconduct. Based on these factors, the Board determined 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 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,

9/14/2022

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Executive Director

Signed by: █