



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: 3033-22

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 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 8 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 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, 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 dated 28 June 2022. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Marine Corps (USMC) and began a period of active duty on 7 May 1996. On 4 June 1998 and 10 August 1999, you were counseled for failure to meet USMC weight standards and advised that failure to meet monthly weight could result in reduction of rank.

On 8 February 2001, you reenlisted in the USMC. On 23 February 2004, you were removed from your second assignment to the Weight Control Program (WCP) due to failure to maintain height and weight standards. On 18 March 2004, you were counseled for failure to meet USMC body composition standards and advised that failure to take corrective action could result in administrative separation. On 31 March 2004, you were notified of the initiation of administrative separation proceedings by reason of failure to meet weight control and body composition standard and elected to waive all your procedural rights. On 2 April 2004, your commanding officer recommended a General (Under Honorable Conditions) discharge characterization of service by reason of failure to meet weight control and body composition standards. After your administrative separation proceedings were determined to be sufficient on law and fact, the discharge authority approved your discharge with a General (Under Honorable Conditions) characterization of service by reason of weight control failure. On 16 June 2004, 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 for a discharge upgrade and contentions that you served five years of honorable service before deciding to reenlist, you lost your sister during the 9/11 Terrorist Attacks in New York, and were going through a divorce. 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, the Board considered the AO. The AO stated in pertinent part:

There is no evidence the Petitioner was diagnosed with a mental health condition during military service. He has provided no post-service medical evidence to support his claims. While stress can contribute to difficulty with weight management, his statement is not sufficiently detailed to establish a nexus, as his difficulties extended over several years and were established prior to 9/11. Additional records (e.g., 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 military service. There is insufficient evidence that his 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 weight control failure, as evidenced by your multiple counseling and removal from the WCP, outweighed these mitigating factors. Additionally, the Board found no evidence in your records documenting that

you served a period of honorable service before your reenlistment. Finally, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service or your inability to maintain your weight. As a result, the Board concluded significant negative aspects of your service outweighed the positive aspects and continues to warrant a General (Under Honorable Conditions) characterization. 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 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,

8/24/2022

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Executive Director
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