



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. 3049-22

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 11 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, 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) furnished by a qualified mental health professional dated 20 May 2022, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you did not do so.

You enlisted in the Marine Corps and began a period of active duty on 22 August 1988. From a period beginning on 12 March 1989 to 16 May 1989, you began five periods of unauthorized absence (UA) adding to a total of six-days and 45 minutes. On 23 May 1989, you received nonjudicial punishment (NJP) for three periods of UA. On 10 January 1990, you received a second NJP for two instances of disobeying a lawful order, two instances of disrespectful in language, communicating a threat, drunk and disorderly conduct. From a period beginning on 15 August 1990 to 22 March 1991, you were deployed in support of operations █. On 13 September 1991, you were counseled for drunk and disorderly conduct. You were advised that failure to take corrective action could result in administrative separation.

On 17 December 1991, you were counseled for being relieved from duties as a sentry of guard, due to an alcohol related incident. You were advised that failure to take corrective action could result in administrative separation. That same day, you were counseled for drunk and disorderly conduct and being verbally abusive to proper authority. You were advised that failure to take corrective action could result in administrative separation. On 20 December 1991, you received a third NJP for being disrespectful in language, and drunk and disorderly conduct towards a Military Police officer. On 15 January 1992, you were counseled for inability to properly maintain a checking account. You were advised that failure to take corrective action could result in administrative separation. On 12 March 1992, you received a fourth NJP for driving under the influence. On 20 April 1992, you received a fifth NJP for use of a controlled substance-THC.

Based on your alcohol and drug abuse, on 28 May 1992, a medical officer diagnosed you with █. On 1 June 1992, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct, at which point, you elected to waive all your procedural rights. On 4 June 1992, your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to pattern of misconduct. On 13 June 1992, your administrative separation proceedings were determined to be sufficient in law and fact. On 15 June 1992, the discharge authority approved and ordered an OTH discharge characterization of service by reason of misconduct due to pattern of misconduct. On 21 June 1992, 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 veterans' benefits along with your contention that you were suffering from █ as a result of your service during █. 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:

During his military service, the Petitioner was appropriately referred for evaluation and treatment of AUD. Problematic alcohol use is 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 he was unaware of his misconduct or was not responsible for his behavior. There is no evidence of another mental health condition. Unfortunately, his statement is not sufficiently detailed to establish a clinical diagnosis or a nexus with his misconduct, as some of it preceded his deployment. Additional records (e.g., postservice medical records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) are required to render an alternate opinion.

The AO concluded, "[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD that can be attributed to military service. There is insufficient evidence that his misconduct could 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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. Further, the Board took into consideration the likely negative impact your misconduct had on the good order and discipline of your unit. Finally, while the Board noted your participation in combat operations, they concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD. The Board determined that your misconduct was, more likely than not, due to your alcohol use disorder, for which you were properly evaluated and treated. 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 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,

7/28/2022

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Deputy Director

Signed by █