



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

██████████
Docket No: 3419-22

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 22 December 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)/mental health condition (MHC) (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 U.S. Marine Corps and began a period of active duty on 26 April 1988. You were issued a counseling warning, on 21 November 1988, for your failure to comply with military appearance/weight control standards. Then, on 26 July 1989, you were issued another counseling warning for you substandard attitude and your performance. This included your behavior to senior NCO's and leaving your assigned place of duty without permission. You

were then issued your third counseling warning, on 12 March 1990, for an alcohol related incident where you were found unfit for duty.

On 13 June 1990, you received non-judicial punishment (NJP) for failure to go to appointed place of duty, disobey an order and incapacitated for duty. You did not appeal the NJP. Subsequently you were given your fourth counseling warning on 19 November 1990 for your continuous minor disciplinary infractions including, disrespect and disobedience toward NCO's and consistent unkept and slovenly appearance.

On 25 July 1991, you received your second NJP for unauthorized absence (UA). This was followed by your fifth counseling warning, on 29 July 1991, this one notifying you that the command had exhausted all avenues to modify and correct behavior and that you were going to be separated from the service. On 30 September 1991, you were counseled for the sixth time for wearing unauthorized liberty attire.

As a result of your misconduct, you were notified for separation for Misconduct, Minor Disciplinary Infractions. You consulted with counsel and waived your right to an administrative board. Your Commanding Officer (CO) forwarded your administrative separation package to the Separation Authority (SA), on 17 October 1991, recommending your administrative discharge from the Marine Corps with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation and directed you be discharged. On 8 November 1991, you were so 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 Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to upgrade your discharge character of service and contention that you began to drink and commit misconduct as a result of personal issues. You assert that the Marines gave you a choice to exit early, which resulted in your current characterization of service. For purposes of clemency and equity consideration, the Board noted you provided advocacy letters but no supporting documentation describing post-service accomplishments.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 19 October 2022. The AO noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in the military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms or 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, “it is my considered clinical opinion that there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to a mental health condition.”

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your two NJPs and six counseling warnings, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your conduct had on the good order and discipline of your command. Furthermore, 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, and there is insufficient evidence your misconduct could be attributed to a mental health condition. Finally, the Board noted that you did not provide any evidence to substantiate your contentions regarding your personal issues at the time or that you were offered an early release from active duty. In reviewing your record, the Board found that you were discharged based on your misconduct after your command appeared to have exhausted their efforts to rehabilitate you for further military service. As a result, the Board determined your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization. While the Board commends your post-discharge good character, even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting an upgraded characterization of service as a matter of clemency or equity. 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,

1/14/2023

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Executive Director

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