



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: 3481-22
Ref: Signature Date



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 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 31 May 2022. You were provided an opportunity to respond to the AO and did so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues 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 U.S. Marine Corps and began a period of active duty on 19 September 1988. On 21 March 1990, you received your first nonjudicial punishment (NJP) for two specifications of being in an unauthorized absence (UA) status from your appointed place of duty. On 11 May 1990, you were counseled concerning unspecified periods of UA and your total disregard to authority. Specifically, you continually demonstrated a total lack of desire, motivation, and drive in putting forth a sincere effort towards improving in reporting to work on time. Although given the opportunity to provide a statement you chose not to do so. On 30 May 1990, you received a second NJP for a two-day period of UA. On 24 August 1990, you were again counseled, this time concerning your frequent involvement with military authorities of a discreditable nature as evidenced by your two NJPs. You again chose not to submit a statement in rebuttal. On 11 September 1990, you commenced a period of UA which ended in your surrender on 17 October 1990. From 26 October 1990 to 11 December 1990, you had an additional period of UA totaling 46 days. On 22 July 1991, you were found guilty at a special court-martial (SPCM) of the aforementioned UAs and sentenced to be confined at hard labor for 75 days, to forfeit \$300.00 pay per month for three months, and to be reduced in rank to E-1. On 1 October 1991, you were notified of your commanding officer's (CO) intent to recommend to the separation authority that you be discharge by reason of pattern of misconduct (POM) with an Other Than Honorable (OTH) characterization of service, at which time you waived your right to consult with military counsel and have your case heard before an administrative discharge board. After your case was determined to be sufficient in law and fact, on 9 October 1991, the separation authority directed you be discharged with an OTH by reason of POM. On 23 October 1991, you were so discharged.

On 4 May 1993, the Naval Discharge Review Board (NDRB) denied your request for a discharge upgrade after determining that it was proper as issued.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrants relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge characterization and your contentions that: (1) you incurred PTSD as a result of military service, (2) you were newly married and a new father who deployed to █ two months after the birth of your son, (3) you were dealing with pressure from home and the USMC, (4) you were denied leave to return home to help your family after a tornado disaster took place in your home town between June and July 1990, (5) your leave requests would be lost, misplaced, left on desks for weeks, etc., which cause you to go UA, and (6) despite this you surrendered and were told you could be court-martialed or deploy with your unit and chose the latter, after which you were hazed. For purposes of clemency consideration, the Board noted you provided one advocacy letter but no supporting documentation describing post-service accomplishments.

Based on your assertion that you incurred PTSD, which might have contributed to the misconduct that led to your OTH characterization of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with the AO. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition during 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 establish a nexus with his misconduct, as his misconduct occurred prior to his deployment and confinement, and his personal statements attribute his misconduct to poor coping associated with family stressors at the time. 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 could be attributed to PTSD."

On 19 June 2022, the Board received your rebuttal in response to the AO. You provided a statement in support of your application and additional documents for consideration.

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 SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. In addition, the Board noted the likely negative effect your conduct had on the good order and discipline of the command. Finally, the Board concurred with the AO that the preponderance of available evidence fails to establish you suffered from PTSD during your military service or that your in-service misconduct could be mitigated by PTSD. 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. While the Board considered your arguments in mitigation and empathized with your current medical condition, 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 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,

9/9/2022

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Executive Director

Signed by: █