



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: 3727-22
Ref: Signature Date

Dear ■■■■■

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 18 July 1989. During the period from 19 July 1991 to 16 March 1992, you received three instances of non-judicial punishment (NJP). Your offenses were failure to obey a lawful order and three periods of unauthorized absence (UA) totaling 29 days. On 11 August 1992, you were convicted by a special court-martial (SPCM) of conspiracy, wrongful possession and use with intent to defraud and deceive an Armed Forces identification card the personal data of another Marine, two specifications of false official statement, four specifications of forgery and wrongfully receive a checkbook the property of another Marine. As punishment, you were sentenced to confinement,

forfeiture of pay, reduction in rank and a Bad Conduct Discharge (BCD). The BCD was subsequently approved at all levels of review and, on 29 August 1994, 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 Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge character of service and received assistance with medical insurance, travel, and living expenses. The Board also considered your contention that your “nightmares and physical well-being are at stake,” that your lack of sleep and assistance for your post-traumatic stress disorder (PTSD) is ruining your life, and that you were not mentally prepared to live a life without being in combat. You assert that coming home without therapy for your PTSD was the cause of your behavior. For purposes of clemency consideration, the Board noted you provided advocacy letters but no supporting documentation describing post-service accomplishments.

As part of the Board’s review, a qualified mental health professional reviewed your request and provided the Board with an AO on 1 July 2022. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in 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. Post-service, he has provided evidence of a diagnosis of PTSD that he reported to a civilian provider is due to combat stress. Unfortunately, his report to the civilian provider is temporally remote from his military service and not consistent with his record, raising questions regarding the validity of the diagnosis. Additionally, while UA and disobedience could be attributed to unrecognized symptoms of PTSD irritability or avoidance, it is difficult to consider how his SPCM misconduct is related to PTSD.

The AO concluded, “[b]ased on the available evidence, it is my considered clinical opinion there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD.”

Based upon this review, the Board concluded that your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your three NJPs and SPCM conviction, 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. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit. The Board further concluded that the discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your BCD. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service, and there is insufficient evidence your misconduct could be attributed to PTSD. The Board noted the nature of your misconduct and concluded, even if there was evidence of

PTSD, there was absolutely no nexus between PTSD and your misconduct related to stealing a checkbook and committing forgery to utter stolen checks. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board determined your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD. 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,

9/15/2022

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Executive Director

Signed by: █