



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: 3837-22
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 28 September 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 13 September 1994. On 7 April 1995, you were issued an administrative remarks (Page 11) concerning deficiencies in your performance and conduct. On 5 June 1995, you received non-judicial punishment (NJP) for dereliction of duty, forgery, and absence from your rack when fire watch did rack count. On 25 July 1995, you were convicted by a special court-martial (SPCM) of three specifications of failure to go at the time prescribed to your appointed place of duty, unlawfully enter the bachelor enlisted quarters (BEQ) room of another Marine with intent to commit a larceny, and breaking restriction. 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 16 September 1996, 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 contentions that your misconduct was related to “racist recruits” and unsupportive drill instructors. 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 20 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 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 reportedly received a diagnosis of PTSD from civilian providers that is temporally remote to military service. Unfortunately, his personal statements are varied and inconsistent with his service record, raising doubt as to the reliability of his report. The available medical records are not sufficiently detailed to provide a nexus with his misconduct. While it is possible that UA and disobedience could be attributed to unrecognized symptoms of PTSD, it is difficult to consider how larceny and forgery would be related to PTSD. 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 there is post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence of another mental health condition that may be attributed to PTSD. There is insufficient evidence his misconduct could be attributed to PTSD or another mental health condition.”

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 NJP 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 also considered the likely negative impact your conduct had on the good order and discipline of your unit. While the Board considered your contentions, the Board noted that you did not provided any evidence, other than your statement, to substantiate any of your contentions. 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. Finally, the Board concurred with the AO and determined that while there is post-service evidence of a diagnosis of PTSD that may be attributed to military service, there is insufficient evidence of another mental health condition that may be attributed to PTSD, and

there is insufficient evidence your misconduct could be attributed to PTSD or another mental health condition. 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 failure to go at the time prescribed to your appointed place of duty, unlawfully entering the BEQ room of another Marine, and breaking restriction. As a result, the Board determined your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD. While the Board commends your post-discharge good character, 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,

10/14/2022

