

DEPARTMENT OF THE NAVY

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

> Docket No: 3859-22 Ref: Signature Date



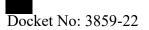
Dear Petitioner:

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 limitations 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 21 November 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 service 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 an advisory opinion (AO) from a qualified mental health professional. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do 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 United States Marine Corps and had an initial period of Honorable service from 25 April 1984 to 7 September 1984. On 3 May 1987, you commenced a second period of service. Your pre-enlistment medical examination and self-reported medical history noted no psychiatric or neurologic conditions or symptoms.



On 31 March 1988, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 112(a), for wrongful use of a controlled substance. You did not appeal this NJP. On 14 June 1988, you were medically evaluated for substance dependence and it was determined that there was "no evidence of alcohol or drug related illness."

On 10 August 1988, you had a one-day period of unauthorized absence (UA) from your unit. On 24 August 1988, you again went UA for a one-day period. On 26 August 1988, you received NJP for those two specifications of UA. You did not appeal this NJP.

On 7 September 1988, you were notified that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. After consulting with qualified counsel, you waived your right to present your case at an administrative separation board. Ultimately, on 31 October 1988, you were discharged from the Marine Corps for misconduct with an Other Than Honorable (OTH) characterization of service and assigned an RE-4B reentry code.

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire to upgrade your characterization of service, (b) your age at the time of your misconduct, (c) your contention that you were struggling with depression due to various life stressors, and (d) your efforts towards recovering from alcohol abuse. For purposes of clemency and equity consideration, the Board noted you did provide documentation related to your Department of Veterans Affairs application for services and advocacy letters.

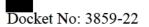
As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 4 October 2022. The Ph.D. noted in pertinent part:

Petitioner was appropriately referred and properly evaluated during military service, and received no mental health diagnosis. This absence of diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the evaluation performed by the provider. Unfortunately, he has provided no medical evidence to support his claims. His personal statement is not sufficiently detailed to establish clinical symptoms or 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 Ph.D. concluded, "it is my considered clinical opinion there is insufficient evidence of a diagnosis 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."

In response to the AO, you provided the aforementioned advocacy letters.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board felt that your misconduct, as evidenced by your positive drug test, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved a drug offense. Further, the Board also considered



the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that illegal drug use is contrary to the Marine Corps core values and policy, renders such Marine unfit for duty, and poses an unnecessary risk to the safety of fellow Marines. Further, in accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about the stressful events occurring your life and their possible adverse impact on your service. Ultimately, the Board concurred with the advisory opinion that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental healthrelated symptoms. The Board noted that your pre-enlistment medical examination and selfreported medical history noted no psychiatric or neurologic conditions or symptoms. Moreover, the Board observed that you did not submit any clinical documentation or treatment records to support your mental health claims despite a request from BCNR on 27 May 2022 to specifically provide additional medical documentation. The Board found that your active duty misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. As a result, the Board determined your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board commends your post-discharge accomplishments, 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 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.

