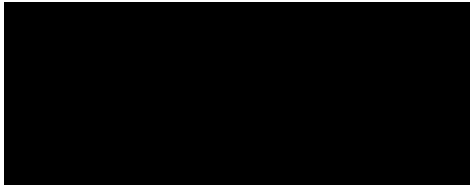




DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

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Docket No: 3891-22
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 26 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 the 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 to 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) of a qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal to the AO, you chose not to do so.

You enlisted in the Marine Corps under a reserve option contract and began an initial obligated period of active service on 23 June 2003. You attended recruit weapons training and qualifications during which another recruit committed suicide while at the firing line on the rifle range. You subsequently completed your weapons training, achieving an Expert rifle qualification on 8 August 2003. You then completed Marine Combat Training and Information Systems Specialist School and were honorably discharged, on 17 January 2004, for continued obligated service in the Marine Corps Ready Reserve. Beginning 9 July 2004 and continuing

through 9 April 2006, your service records contain 17 administrative counseling entries documenting periods of missed mandatory drills. You were notified on 12 February 2006, 12 March 2006, and 12 August 2006, of unsatisfactory participation in the Ready Reserve with a caution regarding the potential for administrative separation under Other Than Honorable (OTH) conditions. After continued unauthorized absences, you were notified of discharge proceedings for unsatisfactory participation due to nine or more missed drills. An affidavit of service, dated 7 September 2006, certifies the delivery of this notification, as well as your election of rights, and your lack of a formal written response to either. In his recommendation for your discharge under OTH conditions, your commanding officer documented receiving communication from your lawyer that you did “not desire to be associated with the Marine Corps in any manner” and that you understood that the command was pursuing an OTH discharge but wished to be discharged as soon as possible. Your separation was approved by the Commanding General, Fourth Marine Division, and you were discharged, on 2 November 2006, under OTH conditions due to more than 70 unauthorized absences since August 2004.

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 to “Honorable” and your contentions, through legal counsel, that you suffered debilitating post-traumatic stress disorder (PTSD), anxiety, and panic attacks following a traumatic experience during recruit training. Specifically, you assert that you heard gunfire after the firing line had ceased fire, did not know who was shooting or at whom, and then discovered that a recruit down the line had committed suicide with his rifle. You argue that your resulting mental health condition is mitigating because prevented you from properly affiliating with your reserve unit to participate in mandatory drill periods. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

Because you contend PTSD or another mental health condition affected the circumstances of your discharge, the Board also considered the AO. The AO stated in pertinent part:

There is no evidence Petitioner was diagnosed with a mental health condition during his service. In contrast, post-service documentation indicated Petitioner was diagnosed with an anxiety disorder, linked to his military service. This post-service documentation was unfortunately limited and did not provide a DSM-V diagnosis. Petitioner has provided a statement he began mental health treatment shortly after his unauthorized absence, but has provided no medical records to support his claim. While Petitioner’s avoidance of drill could be a maladaptive coping skill associated with stress and mental health symptoms there is no evidence Petitioner was unaware of his misconduct or not responsible for his behavior. Additional records (i.e., mental health records from his treatment during his Reserve service, or post-service records describing his diagnosis) would aid in rendering an alternate opinion.

The AO concluded, “[b]ased on the available evidence, it is my clinical opinion there is insufficient evidence of a PTSD diagnosis that may be attributed to military service; however, there is post-service evidence of a diagnosis of an anxiety disorder that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to his MHC (anxiety).”

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 multiple UAs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative effect it had on the good order and discipline of your unit. Additionally, the Board noted that administrative separation for unsatisfactory performance can be initiated after merely 9 missed drills, yet your record indicates that your command afforded him the benefit of a total of 70 missed drills. Additionally, it is apparent from the correspondence at the time of separation proceedings that you were represented by legal counsel who was in communication with the command. In spite of the fact that you could have elected to present the contended mitigating circumstances before an administrative separation board and even could have done so in absentia represented by either by detailed military counsel at no cost to yourself or by your chosen civilian counsel, your then-counsel made it clear that you had no desire to associate with the Marine Corps and your paramount concern was to secure discharge regardless of the likely adverse characterization of service. Finally, the Board concurred with the AO regarding the overall insufficiency of the evidence, especially in contrasting the temporal remoteness of the current documented care when compared to your contentions of having received treatment contemporaneous with your misconduct. 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 was sympathetic to your contended traumatic experience and current mental health struggles, 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 the 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 is attached 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,

9/8/2022

[REDACTED]