



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: 3892-22
Ref: Signature Date

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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 12 October 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)/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 dated 12 August 2022. Although you were provided an opportunity to comment on the AO, you chose not to do so.

You entered active duty with the Marine Corps on 16 June 1975. On 1 June 1977, you received non-judicial punishment (NJP) for possession of marijuana. During the period from 17 January 1978 to 23 February 1978, you received three NJPs for three specifications of unauthorized absence (UA) totaling 29 days and breaking restriction. Subsequently, on 10 April 1978, you requested a good of the service (GOS) discharge to escape trial by court-martial due to 33 specifications of violations of Article 86, Uniform Code of Military Justice. However, your GOS discharge request was disapproved per recommendation and you were notified of administrative separation processing by reason of misconduct due to frequent involvement with military authorities. After waiving your rights, your commanding officer (CO) forwarded your package to the separation

authority (SA) recommending an Other Than Honorable (OTH) characterization of service. The SA approved the CO's recommendation and, on 5 May 1978, you were so discharged.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. On 28 December 1981, the NDRB denied your request after determining that your discharge was proper as issued.

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 and contention that you incurred PTSD and other mental health conditions during military service. You further argued that you suffered from depression after being transferred to California and working in a different occupation specialties other than the one promised to you. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 12 August 2022. The AO stated in pertinent part:

Petitioner's service record is consistent with his personal statement, in that his difficulties began when he was transferred to a different occupation. After this transfer, he was properly evaluated by mental health clinicians on three occasions. At each evaluation, he was diagnosed with a situational or adjustment-related condition, indicating that his providers considered his emotional reaction would likely resolve with removal of the stressor. While a change in jobs is stressful, there is insufficient evidence of a life-threatening event consistent with PTSD. Unfortunately, his personal statement and available records do not establish a nexus with his misconduct, as it is difficult to attribute his extensive misconduct to a situational reaction. 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 evidence of a mental health condition that may be attributed to military service (Adjustment Disorder). There is insufficient evidence all of his misconduct could be attributed to a mental health condition."

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your four NJPs and GOS request, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that your conduct showed a complete disregard for military authority and regulations. Further, the Board considered the likely negative impact your conduct had on the good order and discipline of your command. In addition, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD or other mental health conditions during military service. Additionally, the Board noted that you provided no evidence to substantiate your contentions. 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 of service. 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,

10/19/2022

