



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: 3926-22
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 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 19 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). In addition, the Board considered an Advisory Opinion (AO) from a qualified mental health professional and your response to the AO.

You enlisted in the U.S. Marine Corps and began a period of active duty on 18 August 1998. On 20 November 2000, you received your first nonjudicial punishment (NJP) for two specification of consuming alcohol while under the age of 21. On 11 December 2001, you were counseled regarding your substandard performance by losing military property, for which you chose not to make a statement. On 24 December 2001, you were again counseled regarding your consistent lateness for scheduled formation and inspections and again chose not to make a statement. On 11 January 2002, you received a second NJP for driving with a suspended driver's license. You received a third NJP, on 25 March 2002, for disobeying a SSGT/E-5. On 3 June 2002, you

commenced a period of unauthorized absence (UA) which ended in your surrender 93 days later on 4 September 2002. On 13 September 2002, you received your fourth NJP for the aforementioned UA. On 25 October 2002, you were found guilty at a summary court-martial (SCM) of a seven-day UA and four specification of breaking restriction. You were sentenced to be confined for 30 days, to forfeit \$736.00 pay per month for one month, and to be reduced in rank to E-1. Despite these aforementioned infractions, you were allowed to complete your enlistment and were discharged with a General (Under Honorable Conditions) (GEN) characterization of service on 12 December 2002.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrants relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge characterization and your contention that you incurred PTSD during military service. Specifically, you assert: (1) an incident occurred during the second year of your active service that caused you to have undiagnosed PTSD and (2) the fact that you have service connected disability of PTSD was not taken into consideration when you petitioned the Naval Discharge Review Board (NDRB) for a discharge upgrade. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

Based on your assertion that you incurred PTSD, which might have contributed to the misconduct that led to your GEN characterization of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with the AO. 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. Post-service, the VA has determined service connection for unknown diagnoses. Unfortunately, the Petitioner's personal statement and available VA records are not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., complete VA 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 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."

In response to the AO, you provided rebuttal evidence that documented a service connection for your PTSD.

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 NJPs and SCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board

considered that you already received a large measure of clemency when, despite all of your military infractions, you were allowed to complete you required active service and discharged with a GEN characterization. Further, the Board noted you were receiving substantial compensation from the Department of Veterans Affairs (VA) for your service connected disabilities. This led the Board to conclude that any injustice that may exist as a result of your PTSD is already been adequately addressed by the VA benefits you are receiving. Absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating additional veterans' benefits, or enhancing educational or employment opportunities. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD despite the service connection that exists. As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continue to warrant a GEN characterization. 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 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,

10/3/2022

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Executive Director
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