



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: 3947-22
9528-14
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. Your current request has been carefully examined by a three-member panel, sitting in executive session on 23 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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). Additionally, the Board considered a 28 July 2022 advisory opinion (AO) furnished by a qualified mental health provider. Although you were provided an opportunity to comment on the AO, 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 Marine Corps and began a period of active service on 16 April 2001. On 10 July 2003, you pleaded guilty in civil court to gross vehicular manslaughter while

intoxicated and sentenced to four years of confinement. You were notified of separation processing and initially waived your procedural rights. Upon the advice of your counsel, you rejected substance abuse counseling treatment until completion of your separation proceedings were complete. On 21 July 2004, you elected your right to consult with counsel, and review of your case before an administrative discharge board (ADB). An ADB convened and recommended your separation with an Other Than Honorable (OTH) character of service by reason of misconduct due to civil conviction. On 8 October 2004, your commanding officer concurred with the recommendation of the ADB. On 2 December 2004, your administrative separation proceedings were determined to be sufficient in law and fact. On 12 January 2005, you were discharged with and OTH by reason of misconduct as a result of your civil conviction.

You previously applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request on 1 November 2007 after concluding your discharge was proper as issued. This Board also denied your request for a discharge upgrade on 6 July 2015.

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 the character of your discharge and contentions that you served honorably for approximately four years prior to your separation and earned a number of awards during your service. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

In connection with your assertion that you experienced Post-traumatic Stress Disorder (PTSD), the Board requested and reviewed the AO. The AO reviewed your service record as well as your petition and the matters that you submitted. 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. He declined a referral for evaluation for an alcohol use disorder, and there is no evidence he was unaware of the potential for misconduct or not responsible for his behavior. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide 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 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."

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 civil conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the discrediting effect it had on the

Marine Corps. In reviewing the record, the Board determined that you were appropriately processed and separated for your civil conviction and nature of your misconduct was sufficient to support the assigned characterization of service. Ultimately, the Board concluded it was too serious to be offset by your previous good military character. 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. 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,

10/11/2022

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Executive Director

Signed by: █