



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: 4222-22

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 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 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional, which was previously provided to you. 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 began a period of active duty on 24 July 1984. On your enlistment application, you reported illegal, pre-service drug use. On 2 February

1985, after less than a year of service, you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 86, for an eighteen-day period of unauthorized absence (UA) from your unit. You did not appeal this NJP.

On 28 February 1985, you were given an Administrative Counseling (Page 11), for writing checks with insufficient funds for payment. You were notified that further deficiencies in your performance or conduct may result in disciplinary or administrative action. On 5 March 1985, you were again given a Page 11 for going UA from your unit and writing checks on a closed bank account.

On 27 March 1985, you received your second NJP for violation of UCMJ Article 112(a), for wrongful use of a controlled substance. You did not appeal this NJP, but you did complete Level I substance abuse treatment. On 25 April 1985, you were given a Page 11 for financial mismanagement and again notified that further deficiencies in your performance or conduct may result in disciplinary or administrative action. In July 1985 you completed the urinalysis surveillance program.

On 16 July 1985, you received your third NJP for violations of UCMJ Article 134, for breaking restriction, and Article 86, for a ten-day period of UA from your unit. On 13 November 1986, you received your fourth and final NJP for violation of UCMJ Article 86, for a ten-day period of UA. You did not appeal this NJP.

In December 1986, you received a medical evaluation by a psychologist and diagnosed with dependent personality disorder and alcoholism. As a result of your repeated misconduct, on 4 December 1986, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of Misconduct – Minor Disciplinary Infractions. After consulting with qualified military counsel, you waived your right to present your case at an administrative discharge board. Your commanding officer forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the service with an Other Than Honorable (OTH) characterization of service. The SA approved the recommendation for administrative discharge and directed your OTH discharge from the Marine Corps by reason of misconduct due to minor disciplinary infractions. On 7 January 1987, you were discharged from the service.

The Board carefully considered all potentially mitigating 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, your desire to upgrade your discharge character of service and your contention that you were suffering from a mental health condition due to the pervasive harassment against you being committed by members of your unit. For purposes of clemency and equity consideration, the Board noted you provided supporting documentation describing post-service accomplishments.

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As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 22 September 2022. The AO noted in pertinent part:

During military service, the Petitioner was diagnosed with an alcohol use disorder and a personality disorder. These diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service. Problematic alcohol use is incompatible with military readiness and discipline. During his service, he was deemed aware of his misconduct and responsible for his behavior. Unfortunately, he has provided no medical evidence of PTSD or another mental health condition to support his claims. His personal statement is not sufficiently detailed to establish 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 or another mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD or another mental health condition, other than his in-service diagnosed personality and alcohol use disorders."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your repeated misconduct, as evidenced by your four NJPs and numerous administrative counseling, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact it involved drug use and significant periods of UA. 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 such misconduct is contrary to Marine Corps core values and policy, renders such service member unfit for duty, and poses an unnecessary risk to the safety of their fellow Marines. In making its determination, the Board concurred with the AO and determined that there is insufficient evidence of a mental health condition that may be attributed to military service, other than personality and alcohol use disorder, and there is insufficient evidence your misconduct could be attributed to a mental health condition. The Board highlighted that a personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service. The Board felt that this was evidenced by your pre-service drug use. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing employment opportunities. Based on these factors, 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 and involvement in the community, 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 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,

12/13/2022

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