





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

 Docket No: 4396-22



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 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 8 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, applicable statutes, regulations, and policies, to include the Kurta memo and 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 dated 21 June 2022. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Marine Corps Reserves (USMCR) and began a period of active duty on 20 July 1988. On 9 February 1989, you were discharged with an Honorable characterization of service by reason of completion of required active duty service. On 4 December 1990, you began a second period of active duty service and deployed in support of  and . On 1 January 1991, you received a letter of rank reduction due to unsatisfactory participation on the USMCR. From a period of beginning on 8 December 1991 to 5 December 1992, you received five letters of unsatisfactory participation in the USMCR. As a result, you were notified of the initiation of administrative separation proceedings by reason of unsatisfactory performance, at which point, you elected to waive all your procedural rights. Your commanding

officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of unsatisfactory participation in the USMCR. On 22 March 1993, the discharge authority approved your separation with an OTH characterization of service due to unsatisfactory participation in the USMCR. Subsequently you were discharged.

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 for a discharge upgrade and contentions that you were suffering from Post Traumatic Stress Disorder (PTSD), you were denied medical care, and that you are missing numerous awards on your Certificate of Release or Discharge from Active Duty (DD Form 214). 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, the Board considered the AO. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. Post-service, the VA has determined service connection for PTSD. Unfortunately, his personal statement and available records are not sufficiently detailed to provide a nexus with his misconduct, as it appears that he had difficulty attending drills prior to his deployment. Unfortunately, his personal statement and provided medical records are lacking sufficient detail to establish a nexus with his misconduct. Additional records (e.g., postservice medical records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) are required to render an alternate opinion.

The AO concluded, "[b]ased on the available evidence, it is my clinical opinion that there is post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence that the circumstances surrounding his separation from the Reserves 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 unsatisfactory participation in the USMCR, outweighed these mitigating factors. In making this finding, the Board considered that you were warned on multiple occasions that your continued lack of participation would result in negative consequences. Further, the Board concurred with the AO that there is insufficient evidence that your circumstances surrounding your separation from the USMCR could be attributed to PTSD. 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.

Regarding your request for missing awards on your DD Form 214, the Board noticed you have not yet exhausted all available administrative remedies. You must first request an awards review

of your record with the Marine Corps. Should you feel an error still exists after the conclusion of the service review, you may reapply to the Board with evidence of an error or injustice.

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 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,

8/25/2022

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Executive Director

Signed by: █