



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: 4454-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. After careful and conscientious consideration of the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

A three-member panel of the Board, sitting in executive session, considered your application on 7 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 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 an 18 August 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 commenced a period of active service on 30 January 2017. From the period beginning on 10 May 2019 to 17 October 2019, you were counseled on four occasions for various instances of misconduct, not recommended for promotion due to incomplete professional military education, and notified of your lack of professionalism and

responsibility. As a result of your misconduct, you were notified of the initiation of administrative separation proceedings on 29 November 2019 and waived your right to consult with legal counsel. Your separation physical noted that you were not suffering from PTSD or any mental health condition. On 3 December 2019, your commanding officer (CO) recommended your separation with a General (Under Honorable Conditions) (GEN) character of service by reason of misconduct due to a pattern of misconduct. After your administrative separation proceedings were determined sufficient in law and fact, the separation authority approved your CO's recommendation and directed your separation. On 5 February 2020, you were discharged with a GEN character of service by reason of misconduct due to pattern of misconduct and assigned a RE-4 reentry code.

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 are not limited to, your desire to change your reentry code in order to reenlist in the military and contentions that you suffered from a mental health condition while on active duty, you are now older and have a family, you were dealing with a death in your family at the time, an investigation exonerated you at the time, and you now have different view on life. 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 suffered from a mental health condition, the Board requested, and reviewed, the AO. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, although he was evaluated prior to separation. He has provided no evidence of post-service mental health treatment that would indicate a potential change in functioning should he return to military service. Stressors in military life are different from civilian life; consequently, it is possible the Petitioner would experience difficulties in functioning if he returned to military service, despite his purportedly successful functioning in the civilian environment. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his previous functioning in the military) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence the circumstances surrounding his separation could be attributed to a mental health condition."

Based upon its review, the Board concluded the potentially mitigating factors that you raised were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your multiple counselings, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative effect it had on the good order and discipline of your unit. The Board noted that your conduct was intentional and made you unsuitable for further military service. Further, the Board concurred with the findings of the AO finding that the objective evidence failed to establish that you suffered from a mental health condition that may mitigate your in-service misconduct. Finally,

