



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



Docket No: 4574-22

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.

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 12 December 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider. Although you were afforded an opportunity to submit an AO rebuttal for consideration, you chose not to do so.

You enlisted in the Marine Corps and entered active duty on 9 June 2003. As part of your enlistment application, on 8 December 2002, you signed and acknowledged the "Statement of Understanding - Marine Corps Policy Concerning Illegal Use of Drugs." Your pre-enlistment physical examination, on 10 December 2002, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On or about 9 September 2004, your command issued you a "Page 11" counseling warning (Page 11) noting your speeding ticket resulting in a 90-day suspension of your on-base driving privileges and losing your government driver's license for the same period of time. The Page 11

advised you that a failure to take corrective action may result in administrative separation or limitation of further service. You did not submit a Page 11 rebuttal statement.

On 22 February 2006, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. On 3 March 2006, you provided a written statement to your command where you admitted to using marijuana on pre-deployment leave at your house, as well as smoking both marijuana and hashish while in █. On 7 March 2006, you received non-judicial punishment (NJP) for the wrongful use of a controlled substance. You did not appeal your NJP. On the same day, you also waived your rights to consult with counsel, to submit a rebuttal statement to your proposed separation, and to request a hearing before an administrative separation board. Ultimately, on 19 April 2006, you were discharged from the Marine Corps for misconduct with an under Other Than Honorable (OTH) conditions characterization of service and assigned an RE-4B reentry code.

On 20 December 2007, the Naval Discharge Review Board denied your initial discharge upgrade application.

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 for a discharge upgrade and change to your narrative reason for separation, separation code, and reentry code. You contend that: (a) you suffered from PTSD following your Iraq deployment and were unfairly processed out instead of being treated, (b) since your time in the USMC you have done only positive things, and (c) you were diagnosed with an anxiety disorder four years ago after numerous visits to doctors and specialists, and you believe you have suffered from this disorder since you were on active duty. For purposes of clemency and equity consideration, the Board noted you a personal statement.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 18 August 2022. The Ph.D. stated in pertinent part:

There is no evidence that he was diagnosed with PTSD or another mental health condition in military service, although he was evaluated prior to separation. Post-service, he has provided evidence of a diagnosis of a mental health condition (anxiety disorder) that is temporally remote to his military service. Unfortunately, the Petitioner's personal statement and available records are not sufficiently detailed to establish clinical symptoms or a nexus with his misconduct. In service, he acknowledged marijuana use prior to deployment, which suggests that his use during deployment was a continuation of pre-deployment behavior, rather than an attempt at self-medication for unrecognized PTSD or anxiety symptoms. 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 Ph.D. 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.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concurred with the AO and concluded that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record clearly reflected that your misconduct was willful and intentional and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that illegal drug use by a Marine is contrary to Marine Corps core values and policy, renders such Marines unfit for duty, and poses an unnecessary risk to the safety of their fellow Marines. The Board noted that marijuana use in any form is still against Department of Defense regulations and not permitted for recreational use while serving in the military. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. Moreover, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans’ benefits, or enhancing educational or employment opportunities. As a result, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard, the Board concluded that your misconduct and disregard for good order in discipline clearly merited your receipt of an OTH, and that your separation was in accordance with all Department of the Navy directives and policy at the time of your discharge. 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 that your request does not merit relief.

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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,

12/27/2022

