



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: 4927-22

Ref: Signature Date

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Dear Petitioner:

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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 7 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). 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.

You enlisted in the Marine Corps and began a period of active duty on 28 June 1982. On 29 June 1982, you were identified as a fraudulent enlistee by reason of your pre-service police involvement. On 30 September 1982, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of fraudulent enlistment. You waived your procedural right to consult with military counsel. Your commanding officer (CO) then forwarded your administrative separation package to the separation authority (SA)

recommending your retention in the Marine Corps. The SA approved the recommendation for retention and therefore, you were retained in the Marine Corps.

On 6 September 1982, you received non-judicial punishment (NJP) for three specifications of disrespect in language toward a noncommissioned officer (NCO). On 23 January 1984, you received your second NJP for failure to obey an order. On 6 April 1984, you received your third NJP for two specifications of failure to go to your appointed place of duty. On 9 October 1984, you were convicted by a special court-martial (SPCM) of two specifications of unauthorized absence totaling nine days and disrespect in language toward a superior NCO. As punishment, you were sentenced to confinement, forfeiture of pay, reduction in rank, and a Bad Conduct Discharge (BCD). The record shows, on 9 October 1984, you waived your right for Navy-Marine Corps Court of Military Review (appellate review). On 10 October 1984, the Naval Clemency Parole Board received your waiver of clemency review; receipt of the waiver satisfied the requirements in accordance with naval regulation. The BCD was subsequently approved at all levels of review and, on 15 February 1985, you were so 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 Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to change your discharge character of service, remove the language that you waived the opportunity for Navy-Marine Corps Court of Military Review and Naval Clemency and Parole Board Review, and remove the “statements of AWOL one day and eight days and that used inappropriate language when with superiors” from your record. The Board considered your contentions that: 1) you incurred PTSD from combat operations in █ and █, which contributed to your misconduct; 2) your BCD was excessive in punishment, and your misconduct did not reach the level warranting a BCD; and 3) prior to your BCD, your military records reflect an administrative discharge action that was proposed; it was not explained to you why the initial administrative discharge action was upgraded to a BCD after seven months from your return to stateside. You assert that some of your misconduct, such as UA, was due to an error and misconception regarding the appeals process. You further assert that you do not recall signing a waiver or consulting with legal counsel concerning your right to waive Navy-Marine Corps Court of Military Review or the Naval Clemency and Parole Board Review. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board’s review, a qualified mental health professional reviewed your request and provided the Board with an AO on 18 October 2022. 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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. 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, particularly as some of his misconduct preceded his deployments and

he claims that some of his misconduct was due to error or ignorance of the military judicial process. 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."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your three NJPs and SPCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard of military authority and regulations. Further, the Board concurred with the AO and determined that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service, and there is insufficient evidence your misconduct could be attributed to PTSD or another mental health condition. As the AO noted, your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct, particularly as some of your misconduct preceded your deployments. The Board considered that you were awarded your BCD as a result of a SPCM conviction and you were represented by legal counsel during the proceedings. As a result, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your BCD. While the Board considered your arguments of error and injustice, they noted you provided no evidence to substantiate your assertions. As a result, the Board decided your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD. 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 granting you the relief you requested or granting relief as a matter of clemency or equity. 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,

12/27/2022

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Executive Director

Signed by: █