



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

██████████
Docket No: 5359-22
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 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 Board waived the statute of limitation 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 23 September 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, and applicable statutes, regulations, and policies, to include to 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) of a qualified mental health provider which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 8 September 1999. Shortly thereafter, in February of 2000, you received counseling for substandard conduct, threatening comments toward a Sergeant and Corporal, and provoking speech towards a private first class. You then accepted nonjudicial punishment (NJP), on 18 February 2000, for the latter

violation of Article 117. In September of 2000, you suffered a hernia due to lifting heavy boxes and were hospitalized in October of 2000 for surgery related to your injury. You were then counseled in November of 2000 for failing to obey liberty policies which required you to depart and return with your liberty buddy. You accepted a second NJP, on 12 March 2001, for a violation of Article 91 due to insubordinate and belligerent conduct towards a corporal, Article 92 due to failure to obey a lawful order to complete unfinished tasks and failure to obey a lawful order by the underage consumption of alcohol, Article 107 due to a false official statement, and Article 112 for being drunk on duty while serving as a duty driver. Later that year, on 28 June 2001, you accepted a third NJP for violations of Article 86 due to an absence from your appointed place of duty, Article 91 for disrespectful deportment toward a corporal, and Article 92 for failure to obey a lawful order. You were counseled, in August of 2001, regarding processing for administrative separation due to repeated violations of the Uniform Code of Military Justice. Subsequently, you received a fourth NJP for an additional unauthorized absence, continued disrespectful language toward a noncommissioned officer, and for violating Article 134 by breaking restriction. Although your official military personnel file does not contain the complete records of your administrative separation processing, your record of discharge reflects that you waived your right to a hearing before an administrative board and were separated, on 5 October 2001, for a pattern of misconduct consisting solely of minor disciplinary infractions with an Other Than Honorable (OTH) characterization. At the time of your separation, the final proficiency and conduct marks for your enlistment were 3.4 and 3.2 respectively.

In November 2018, the Naval Discharge Review Board (NDRB) considered your contentions that you suffered from post-traumatic stress disorder (PTSD) and personality disorder (PD), that your mental health conditions contributed to your discharge, and that your failure to seek support for what you were experiencing was symptomatic of your mental health conditions. You also submitted evidence of post-discharge clemency. Ultimately, the NDRB determined your discharge was proper as issued.

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 to upgrade your discharge and your contentions that your assignment to light duty following your injury caused your peers to single you out and bully you, which led to isolation and depression, thus aggravating your undiagnosed PD and resulting in your subsequent pattern of misconduct. Additionally, you present arguments relating to the severity of your misconduct as meriting consideration for clemency when considered in conjunction with your post-service accomplishments, to include graduating from college, beginning your own successful business, and giving back to your community by shifting from party supplies to provision of protective personal equipment in the wake of the recent pandemic. For purposes of clemency consideration, the Board noted provided supporting documentation describing post-service accomplishments and advocacy letters.

Because you contend that PTSD or another mental health condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

Petitioner's in-service records did not contain evidence of a diagnosis of a mental health condition or psychological symptoms/behavioral changes, which may have

indicated a mental health condition. He did not endorse any psychological symptoms or mental health conditions on his discharge physical exam and was deemed medically qualified for separation from service. Throughout his disciplinary actions, counselings, and administrative processing, there were no concerns cited which would have warranted referral to mental health resources. Although Petitioner and counsel claimed mitigation due to a mental health condition, Petitioner offered alternative explanations for the circumstances that led to his NJP's, attributing them to unfair and punitive actions by Marines in his chain of command, not as a result of any psychological trauma or mental health conditions. Petitioner was not diagnosed with a Personality Disorder, but sixteen years post-discharge, he was retrospectively diagnosed with PTSD from his military service.

The AO concluded, "it is my considered medical opinion though Petitioner carries a post-discharge diagnosis of PTSD, the preponderance of objective evidence failed to establish his in-service misconduct could be attributed to PTSD or other mental health conditions."

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 four NJPs, 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. Further, the Board concurred with the AO that the preponderance of objective evidence failed to establish your in-service misconduct could be attributed to PTSD or other mental health conditions. The Board observed that your initial counseling entries and NJP for threats and provoking speech predated your injury and, therefore, would not relate back to any maltreatment resulting therefrom. With respect to your contentions of post-discharge character, although the Board favorably considered the matters of your business efforts, lack of post-discharge criminal history, and positive letters of support, the Board concluded that the evidence you submitted for consideration at this time is insufficient to outweigh the scope and continuity of your misconduct evidenced by your four NJPs and additional counseling entries. 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, changing your narrative reason for separation, or granting clemency in your case. 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 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 is attached 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,

10/14/2022

[REDACTED]

Executive Director

[REDACTED]