



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

■
Docket No. 6121-22
Ref: Signature Date

Dear ■

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.

A three-member panel of the Board, sitting in executive session, considered your application on 30 March 2023. 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 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness regarding discharge upgrade requests by Veterans claiming mental health conditions (Kurta 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) (collectively the "Clarifying Guidance"). The Board also considered the 1 June 2016 guidance from the Secretary of the Navy relating to Disability Evaluation System Dual Processing, as well as the 17 February 2023 advisory opinion (AO) from two different medical professionals.

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.

A review of your record revealed that you enlisted in the Marine Corps and commenced a period of active duty on 2 June 2014. In May 2018, you were formally counseled regarding your failure of the physical readiness test. On 21 August 2019, you received nonjudicial punishment for

providing a false statement after a car accident. After the imposition of the nonjudicial punishment, you were issued a formal written warning. On 20 November 2019, you were issued a formal counseling concerning the issuance of a civilian court restraining order. On 31 January 2020, you received nonjudicial punishment for disobeying a Military Protective Order. After the imposition of the nonjudicial punishment, you were issued a formal written warning. On 27 February 2020, you were issued a formal counseling regarding a civilian court restraining order. On 6 April 2020, you received nonjudicial punishment for three instances of unauthorized absence from restricted muster and two instances of disobedience.

On 7 April 2020, you underwent a medical evaluation prior to being processed for involuntary separation. According to the evaluation, you were considered responsible for your behavior. On 20 April 2020, you were reviewed by the Physical Evaluation Board, which recommended that you be placed on the temporary disability retired list (TDRL) due to headaches. On 23 April 2020, you were reviewed for traumatic brain injury due to your documented head injuries in service. According to the evaluation, to the extent the you claimed you suffered from traumatic brain injury (TBI), such TBI did not contribute to your misconduct.

On 23 April 2020, you were notified of the initiation of administrative separation processing and your rights in connection therewith. You elected to have an administrative board. On 20 May 2020, you received a formal written counseling concerning your inappropriate conduct toward a female Marine. On 23 June 2020, you received a formal written counseling concerning that you were drunk and incapacitated for duty. Ultimately, an administrative separation board recommended you be separated with a General (Under Honorable Conditions) characterization for pattern of misconduct.

On 2 December 2020, Commander, Marine Corps Installations Command National Capital Region, forwarded a recommendation for your discharge. The Commander's recommendation included a review of the 1 June 2016 Secretary of the Navy's guidance concerning Disability Evaluation System Dual-Processing. According to the letter:

2. I concur with the board's findings and recommendations that [Petitioner] be separated with a General (Under Honorable Conditions) characterization of service for Misconduct specifically a pattern of misconduct.

3. I have reviewed the respondent's Separation History and Physical Exam (SHPE) [Petitioner] does not suffer from service-related Post-Traumatic Stress Disorder (PTSD). However, he does have a diagnosis of Anxiety Disorder (unspecified) and Insomnia Disorder (co-morbid with anxiety). [Psychiatrist] states in his professional opinion, the Respondent should be considered responsible for his behavior, as he retains the capacity for understanding and appreciating right from wrong.

Thereafter, you were discharged, on 24 February 2021, with a General (Under Honorable Conditions) characterization of service.

In your petition, you request that your General (Under Honorable Conditions) characterization of service be changed to a medical retirement with placement on the TDRL with a 50% disability rating. In support of your request, you contend that you were previously found unfit for duty by the PEB due to “Headaches (Unstable)” and you were recommended to be placed on the TDRL with a 50% disability rating. You further assert that, while you were in the Integrated Disability Evaluation System (IDES), you continued to have mental health behavioral issues due to the headaches, and you were subsequently discharged early with a General (Under Honorable Conditions) discharge due to misconduct related to your unfitting condition. You assert that medical documentation during this time period reflects treatment and multiple mental health evaluations.

In order to assist the Board in reviewing your petition, it obtained the 17 February 2023 AO, which was prepared by two different medical professionals. You were provided a copy of the AO, which was considered unfavorable to your request, and you did not provide a response. According to the AO:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated on multiple occasions. In-service, he was diagnosed with several mental health conditions. These diagnoses were based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluations performed by the mental health clinicians. While there is evidence in his service medical record of treatment of head injury, the evidence is inconclusive regarding residual symptoms, as his evaluations did not provide sufficient evidence to make a determination regarding TBI.

When evaluated in service, his providers considered that any potential TBI was not contributory to his misconduct. Additionally, his treatment providers determined that, although he experienced mental health concerns, he was aware of right and wrong and responsible for his behavior.

Based on the available evidence, it is my considered clinical opinion there is insufficient evidence of TBI that may be attributed to military service. There is in-service evidence of a diagnosis of PTSD and other mental health conditions that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to TBI, PTSD, or another mental health condition.

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, and the Board disagreed with your rationale for relief. In review your petition, the Board applied liberal consideration to your contentions and reviewed your petition in light of the clarifying guidance. In reaching its decision, the Board observed that you were afforded all procedural protections in connection with your discharge. Namely, you received three nonjudicial punishments as well as several formal written warnings. You availed yourself of your right to an administrative board. At your administrative board, the board members recommended that you be discharged with a General (Under Honorable Conditions)

characterization of service. Further, this Board observed that, prior to being processed for administrative separation, you were reviewed by medical professionals.

In addition, prior to issuing his recommendation concerning your discharge, the separation authority specifically reviewed the 1 June 2016 Secretary of the Navy Guidance relating to Dual Processing. After review and application of the principles set forth therein, the separation authority determined that your misconduct-based separation took precedence over your disability processing. Finally, the Board concurred with the findings of the AO, which was prepared by two different medical professionals, and concluded that there was insufficient evidence that you had TBI attributable to military service and that there was insufficient your misconduct could be attributed to TBI, PTSD, or another mental health condition. As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant your separation with a General (Under Honorable Conditions) characterization. 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,

4/11/2023

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Executive Director

Signed by:

A black rectangular redaction box covering the name of the Executive Director.