



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

█
Docket No: 6459-22
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 18 November 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 and your response to the AO.

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 U.S. Marine Corps and began a period of active duty on 4 December 1982. On 2 February 1983, non-judicial punishment (NJP) was imposed on you for 27 days unauthorized absence (UA). Subsequently, you were counseled regarding your attitude and performance of duty and the adverse effect of your UA and further infractions of the UCMJ will

not be tolerated and is punishable under the UCMJ. On 29 May 1983, you deployed to ██████████ to participate in multinational peacekeeping force. You were subsequently given your second NJP for disobeying an order and breach of peace while deployed in ██████████. You were again counseled regarding your substandard performance and attitude and further violations of the UCMJ will result in processing for separation. You returned from ██████████ on ██████████ ██████████, and eleven days later you received your third NJP for being incapacitated for performance of your duties. Subsequently, you received your third counseling warning for your poor personal appearance and inability to follow simple orders. You then received your fourth NJP for sleeping on post on 9 February 1984. On 16 June 1984, you started a period of UA that lasted until your surrender on 30 November 1984. You then began another period of UA on 16 January 1985 until your surrender on 4 February 1985. In the meantime, you tested positive for marijuana on 23 January 1985. On 13 February 1985, through advice from counsel, you requested a separation in lieu of trial. The staff judge advocate reviewed your request and found it was correct in law and fact. On 25 February 1985 the separation authority approved your request and directed separation. You were discharged, on 27 February 1985, with an Other Than Honorable (OTH) characterization of service.

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 was not limited, your request to upgrade your characterization of service and contentions that you suffered from post-traumatic stress disorder (PTSD) due to your combat service. You further contend that you suffer anxiety, reactions to loud noises, nightmares, and flashbacks. For purposes of clemency consideration, the Board noted you did provide a personal statement, letters of support, and a photograph.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 28 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. He has provided no medical evidence in support of his claims. The Petitioner's misconduct began just one month into his active duty contract and continue through his deployment and thereafter. PTSD symptoms typically do not manifest until several months to years following a traumatic event, thus it is unlikely that his misconduct prior to and during his deployment were the result of any mental health condition. The nature and severity of his misconduct throughout his time in service are not typical of one who suffers from a mental health condition or PTSD. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., 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 that there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

In response to the AO, you submitted a copy of the first page of your Department of Veterans Affairs disability rating decision dated 16 December 2019.

After thorough review, the Board concluded that your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your four NJPs and your request for separation in lieu of trial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it included a drug offense. 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. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service, and there is insufficient evidence your misconduct could be attributed to PTSD. As a result, the Board determined your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH. 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 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,

12/5/2022

