



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: 6584-22

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 14 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 7 June 1984. On 23 May 1989, you were convicted by a special court-martial (SPCM) of unauthorized absence (UA) totaling 1,672 days. As punishment, you were sentenced to confinement, forfeiture of pay, reduction in rank, and a Bad Conduct Discharge (BCD). The BCD was subsequently approved at all levels of review and, on 8 March 1993, 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 and correct your date entered active duty. You contend that you experienced extreme mental distress and PTSD and had no recourse or understanding of how to deal with the condition. You assert that your experience left you distressed, saddened, panicky, and full of anxiety as aggravated by your time in basic training. You further assert that you were overwhelmed in boot camp because you were not accustomed to “being talked down to or being singled out.” For purposes of clemency and equity consideration, the Board noted you provided advocacy letters and medical documentation, but no supporting documentation describing post-service accomplishments.

As part of the Board’s review, a qualified mental health professional reviewed your request and provided the Board with an AO on 2 November 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 administrative processing, there is no indication that he verbalized having suffered from any mental health conditions. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. 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 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.”

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 SPCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that your misconduct showed a complete disregard for military authority and regulations. The Board felt your extended period of UA was a serious violation of your contractual obligation to the Marine Corps. The Board further concluded that the 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. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a mental health condition that may be attributed to military service, and there is insufficient evidence that your misconduct could be attributed to a mental health condition. As a result, the Board determined your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD. Finally, the Board noted that Block 12a (Date Entered AD This Period) of the Certificate of Release or Discharge from Active Duty (DD Form 214) accurately reflects your date entered active duty as “84 06 07.” Therefore, while the Board carefully considered your post-discharge accomplishments and medical conditions, 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.

Regarding your request to remove the Good Conduct Medal reference in your DD Form 214, the Board found no error associated with its inclusion on the form. The Good Conduct Medal reference only states a commencement date for calculating a new period of eligibility for the medal rather than granting you the medal. Consequently, the Board deemed no action was required on this issue.

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,

1/5/2023

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Executive Director

Signed by: █