



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. 6662-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 13 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, 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)/mental health condition (MHC) (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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 18 January 2023, which was previously provided to Petitioner. 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 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 23 July 1979. On

6 August 1979, documents in your official military personnel file (OMPF) document that you were falling behind at recruit training, experiencing difficulty reading and writing English, required constant supervision, and no longer wanted to be in the military. Additionally, you were evaluated by the neuropsychiatric unit, which noted, “[he] does not want to be here and cannot cope with the pressure...[He] is very frightened and confused...[and] will not make a good Marine.”

On 19 September 1979, your executive officer’s (XO’s) comments specific to your performance state, “[he] will seek any method to help himself get a discharge from the Marine Corps; refuses to train and is solely motivated for discharge.” Your XO then recommended you be discharged by reason of convenience of the government (COG) as a training failure with an Honorable (HON) characterization of service due to your inability to adapt socially and emotionally. On 21 September 1979, your commanding officer (CO) agreed. On 27 September 1979, you were notified of your pending administrative separation by reason of COG, at which time you waived your right to submit a statement on your behalf. On 3 October 1979, you were discharged with an HON characterization by reason of COG.

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 narrative reason for separation and contentions that you incurred food poisoning in boot camp resulting in mental health concerns (MHC), you were treated unfairly, and your initial DD 214 did not list “trainee failure” as the reason for your discharge. For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

Based on your assertion that you incurred (MHC) during military service, which might have mitigated the circumstances surrounding your separation from service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with the AO. 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. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with the circumstances of his separation, which appear to be related to difficulty adapting, possibly due to language, cognitive, or other barriers. Additional records (e.g., active duty or post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his separation) may aid in rendering an alternate opinion.

The AO concluded, “it is my clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence the circumstances surrounding his separation could be attributed to a mental health condition.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board concurred with the AO that there is no evidence you were diagnosed with a mental health condition that may be attributed to your military service, and insufficient evidence the circumstances of your separation could be attributed to a mental health condition. Further, the Board found no evidence to substantiate your contentions of food poisoning or unfair treatment. In fact, it appears, based on your record, that you were given every opportunity to complete your basic training and you continually sought to be discharged. As a result, the Board found insufficient evidence of error or injustice to change your record. 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,

3/30/2023

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Executive Director
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