



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. 7583-22
9931-18
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 8 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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.

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 previously applied to this Board for an upgrade to your characterization of service and were denied on 6 August 2019. Before this Board's denial, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 30 March 1984, based on their determination that your discharge was proper as issued.

You enlisted in the Marine Corps and began a period of active duty on 22 June 1979. On 5 July 1979, you received non-judicial punishment (NJP) for disrespect in department toward a senior noncommissioned officer. On 6 July 1979, you were issued an administrative remarks concerning your continued involvement of a discreditable nature with military authorities; you were advised that your continued involvement could result in your administrative discharge. During the period from 28 May 1980 to 3 September 1981, you received six instances of NJP. Your offenses included drunk on duty, conspiring with another Marine to defraud the government, willfully disobeying a lawful order, defrauding the government, unauthorized absence on three occasions, and sleeping on post. As a result, on 2 October 1981, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to frequent involvement of a discreditable nature with military authorities. You were advised of your procedural rights and elected your procedural rights to consult with military counsel and present your case to an administrative discharge board (ADB). Prior to the ADB convening, on 23 October 1981, you were convicted by a summary court-martial (SCM) of violation of a lawful order and resisting apprehension. On 22 December 1981, an ADB convened, and found that based on the preponderance of the evidence, you committed misconduct due to frequent involvement of a discreditable nature with military authorities and recommended administrative discharge from the naval service with an Other Than Honorable (OTH) characterization of service. The separation authority approved the recommendation for administrative discharge and directed your OTH discharge from the Marine Corps. On 28 January 1982, you were discharged from the Marine Corps with an OTH characterization of service by reason of misconduct due to frequent involvement of a discreditable nature with military authorities.

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 contentions that your character of service is an injustice since it was the result of a mental health condition caused by stress, coping mechanism, pain, deployment, and racism you received while in service. You assert that you used alcohol and mischievous incidents to deal with your emotions, instead of getting help from the military, and you viewed everyone as an enemy. For purposes of clemency and equity consideration, the Board noted you provided supporting documentation describing post-service accomplishments, advocacy letters, and excerpts from your service medical record.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 6 January 2023. The AO noted in pertinent part:

There is no evidence that the Petitioner 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 one letter post-service that indicates a diagnosis of Paranoid Schizophrenia, however it is temporally remote to service as well as non-inclusive of any diagnostic criteria or rationale for diagnosis. 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 seven NJPs and SCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct, and concluded it showed a complete disregard for military authority and regulations. The Board also considered the likely negative impact your conduct had on the good order and discipline of your unit. Furthermore, the Board concurred with the AO 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 the AO noted, unfortunately, your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct. Finally, the Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board commends your post-discharge good character and accomplishments, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

3/23/2023

