



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

█
Docket No. 7652-22
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 10 February 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 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider. Although you were afforded an opportunity to submit an AO rebuttal for consideration, you chose not to do so.

You enlisted in the Marine Corps and entered active duty on 11 September 2000. As part of your enlistment application, on 9 December 1999, you signed and acknowledged the "Statement of Understanding - Marine Corps Policy Concerning Illegal Use of Drugs." Your pre-enlistment physical examination, on 10 December 1999, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. You disclosed pre-service marijuana usage during your enlistment physical examination.

On 30 January 2004, your command issued you a “Page 11” counseling warning (Page 11) documenting your unauthorized absence from your appointed place of duty. The Page 11 advised you that a failure to take corrective action may result in disciplinary action and/or processing for administrative discharge. You did not submit a Page 11 rebuttal statement.

On 18 February 2004, pursuant to your guilty plea you were convicted at a Summary Court-Martial (SCM) of the wrongful possession of marijuana. You were sentenced to confinement for thirty days, forfeitures of pay, and a reduction in rank to the lowest enlisted paygrade (E-1). As part of a pretrial agreement, you agreed to plead guilty at a SCM and waive an administrative separation board in lieu of adjudicating your drug offense at a Special Court-Martial.

On 2 March 2004, your command issued you a “Page 11” counseling warning (Page 11) documenting your illegal drug possession. The Page 11 advised you that processing for administrative separation due to drug possession was mandatory. You did not submit a Page 11 rebuttal statement.

Between 16 March 2004 and 29 March 2004, you were entered into a partial hospitalization at the Substance Abuse Rehabilitation Program Department (SARPD) with an alcohol dependence diagnosis. However, due to your lack of motivation and sincere effort as evidenced by multiple SARPD rule infractions, you were considered non-amenable to treatment. On 30 March 2004, your command issued you a Page 11 documenting your alcohol abuse rehabilitation failure.

On 1 April 2004, your received non-judicial punishment (NJP) for failing to obey a lawful order when you drove on base while pending a base driving revocation. You did not appeal your NJP. On 2 April 2004, your command issued you a Page 11 documenting your NJP.

On 2 April 2004 your command notified you that you were being processed for an administrative discharge by reason of misconduct due to drug abuse, misconduct due to a pattern of misconduct, and for being an alcohol abuse rehabilitation failure. You consulted with counsel and, pursuant to the pretrial agreement, waived your right to request an administrative separation board. Ultimately, on 22 April 2004, you were discharged from the Marine Corps for misconduct with an under Other Than Honorable (OTH) conditions characterization of service and assigned an RE-4B reentry code.

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 for a discharge upgrade and contentions that: (a) on active duty you were going through a divorce and having a hard time, (b) your command did not do any investigation into the matter and you lost all hope, (c) you were threatened until you signed your discharge papers, and (d) you had undiagnosed PTSD. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 22 December 2022. The Ph.D. stated in pertinent part:

The Petitioner contends that he was going through a divorce and had undiagnosed PTSD during service which might have mitigated the circumstances of his discharge. There is no evidence that he was diagnosed with a mental health condition in military service other than Alcohol Dependence, 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, 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 Ph.D. 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 these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record clearly reflected that your misconduct was willful and intentional and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

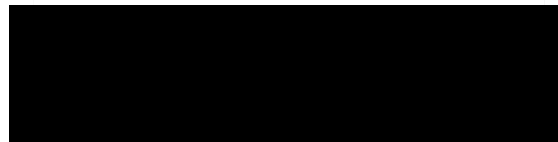
The Board determined that you did not provide any convincing evidence to establish you were the victim of threats or harassment on active duty. The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that drug possession by a Marine is contrary to USMC core values and policy. The Board noted that marijuana possession and/or use in any form is still against Department of Defense regulations and not permitted for

recreational use while serving in the military. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. Moreover, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board determined that there was no impropriety or inequity in your discharge, and even under the liberal consideration standard, the Board concluded that your misconduct and disregard for good order in discipline clearly merited your receipt of an OTH, and that your separation was in accordance with all Department of the Navy directives and policy at the time of your discharge. 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,

2/16/2023



Executive Director

Signed by: █