



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

█
Docket No. 7702-22

Ref: Signature Date



Dear █

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 limitations 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 service 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)/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). The Board also considered an advisory opinion (AO) from a qualified mental health professional. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the United States Marine Corps Ready Reserves and commenced a period of service on 12 June 2000. On 10 November 2003, you were notified that you were being processed for administrative discharge from the Ready Reserves due to Unsatisfactory Participation, for having missed 22 scheduled IDT drill periods in an unauthorized absence (UA) status between 1 October 2002 and 10 November 2003. This notice was sent via certified mail to your home of residence, but you did not respond. In his recommendation of administrative separation, your commanding officer (CO) noted that you "only sporadically attended drill over the past 18 months. The company has contacted him numerous times and has successfully brought him back twice. However, he immediately goes UA the following months and we have to begin the process all over again." Your CO goes on to say that you "rebuffed all orders and refused to drill." Ultimately, on

26 February 2004, you were discharged from the Marine Corps for Unsatisfactory Participation in the Ready Reserves with an Other than Honorable (OTH) characterization of service and assigned an RE- 4 reenlistment code.

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire to upgrade your characterization of service, (b) your contention that your recruiter informed you that you would be a tank driver but you ended up as a food service specialist, and (c) your assertion that you thought you would be discharged with a General (Under Honorable Conditions) discharge vice an Other than Honorable (OTH) characterization of service. For purposes of clemency and equity consideration, the Board noted you did not provide evidence of post-service accomplishments or character letters in support of your request.

In your petition, you checked the box that states you have been diagnosed with or are suffering from Post-Traumatic Stress Disorder (PTSD). Therefore, 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 6 January 2023. The Ph.D. noted in pertinent part:

There is no evidence that the Petitioner was diagnosed with PTSD or any 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, 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 the potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about your promised assignment in the service. Specifically, the Board felt that your lack of participation, as evidenced by your 21 periods of UA, outweighed these mitigating factors. The Board considered the negative impact your conduct had on the good order and discipline of your command. The Board noted that despite the efforts made by your chain of command to assist you in your continued military service, you continued to refuse to participate or comply with orders. Administrative processing for unsatisfactory participation can be initiated after nine or more periods of UA. The Board determined that such conduct is contrary to Marine Corps values and policy.

In making this determination, the Board concurred with the advisory opinion that there was no evidence that you suffered from any type of mental health condition while serving in the Ready

Reserves, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. You have provided no medical evidence in support of your claims, nor is your personal statement sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct. The Board found that your decision to not drill was intentional and willful 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 otherwise not be held accountable for your actions. As a result, the Board determined your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization.

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. Therefore, 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,

3/21/2023

