



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

██████████
Docket No. 7737-22
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 April 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 the 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 to 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) of a qualified mental health provider and your response to the AO.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 12 June 1991. On 22 May 1994, you overdosed on 26 aspirin tablets, reportedly to try to help you sleep. On 12 October 1994, you were subject to nonjudicial punishment for a violation of Article 86 of the Uniform Code of Military Justice (UCMJ) for failing to go to your appointed place of duty at a

base pavilion for a unit party. On 1 March 1997, you voluntarily reenlisted and your period of continuous honorable service is documented in your discharge records.

On 7 March 1997, you received psychiatric screening for pre-trial confinement, on the basis that you posed a flight risk while awaiting court-martial. You received a competency screening under Rule for Court-Martial 706 and, although the mental health report noted that your severe Personality Disorder (PD) was not expected to improve, you were mentally competent. During a mental health follow-up, you expressed that you were upset with your impression that you would likely be separated from the Marine Corps.

The following month, on 30 April 1997, you were command-referred to a mental health evaluation for behavior unbefitting your rank, with observations that you would regularly break into tears when challenged by authority and that you had intentionally failed a physical fitness test in protest. You reported that you did not like the way things were “done” at your new command, but you denied other symptoms. You were assessed as potentially unsuitable for service due to diagnosis of PD with passive aggressive and narcissistic features, but found psychiatrically fit for duty. The exam also diagnosed your alcohol abuse and recommended routine processing for separation after documenting poor performance.

You received administrative counseling, on 17 June 1997, for failure to obey a direct order and for disrespect toward a first class petty officer, citing violations of Articles 92 and 91, respectively, of the UCMJ. You were admitted from the brig for emergency medical care on 29 July 1997 for reports of suicidal and homicidal ideations. An additional confinement physical, on 30 July 1997, noted that you had refused referral to level II alcohol rehabilitation and, afterward, had been involved in several incidents of sexual assault, battery, and demeaning gestures toward enlisted females.

The next day, you were again seen by medical “crying” and “confused” but not imminently suicidal or homicidal. Your medical record indicates that you had expressed “a plan to contemplate suicide” when you could absent yourself and gain access to guns and that hospitalization was not necessary as long as you were otherwise prevented from returning to your home state of Oregon, where you had indicated an ability to gain access to weapons. You were again found fit both for confinement and for administrative separation.

You self-requested further psychiatric care, on 4 August 1997, again reporting that you wanted to kill yourself and had a plan to do so once you had the opportunity. Mental health recommended, on 11 August 1997, that you be maintained in isolation during confinement after you made statements that you wanted to kill yourself “as well as many others, with no particular targets” and that you wanted to “hurt as many people as possible like McVeigh or that guy who killed 58 people and buried them under his house.” You reported that you would serve your confinement and that your mental health provider would “read about [you] massacring people someday.”

Subsequently, you were formally charged for offenses under the UCMJ for two specifications of Article 92 for violations of Secretary of the Navy Instruction 5300.26B, a lawful general order, by wrongfully asking a female lance corporal on a date on numerous occasions after being refused and for entering the same female's barracks bathroom while she was taking a shower, both of which created an intimidating, hostile, and offensive working environment. You were charged with a third specification for violation of the same order by wrongfully making unwanted sexual comments to a private first class and, thereby, creating an intimidating, hostile, and offensive working environment, and for a fourth specification under Article 92 for violation of a lawful written command order by wrongfully entering a female barracks room while a junior enlisted female was present. You were charged under Article 117 for wrongful use of provoking words toward a female junior enlisted Marine – to include multiple inappropriate comments about wanting to “eat” her – and, finally, for three specifications of violations of Article 128, assault, for unlawfully grabbing a female junior enlisted Marine's hand and refusing to let go, for unlawfully touching her by placing a broomstick between her legs, and for unlawfully touching her by putting your arms around her.

On 6 October 1997, you submitted a voluntary request, through designated defense legal counsel, for separation in lieu of trial (SILT) for the good of the service. Your request was approved and you were discharged under Other Than Honorable (OTH) conditions, on 27 October 1997, with a restrictive reentry code of RE-4.

Your application to the Naval Discharge Review Board (NDRB) to upgrade your discharge was reviewed on 6 December 1999, wherein you included verification of employment and performance as well as multiple character statements, to include form your employer and from a service member which whom you had served. Your application was denied by the NDRB after it determined your discharge was proper as issued.

That same year, on 24 October 2000, you applied for enlistment into the Army National Guard (ARNG). In your application, you denied prior military service or rejection for reenlistment. The ARNG discovered the fraudulent statement on your application but approved a waiver for your prior OTH for SILT. You subsequently enlisted in the ARNG and later deployed to ██████████. While deployed to ██████████ in support of post-9/11 contingency operations, on 20 November 2003, you were again formally charged for multiple violations of the UCMJ, which included disrespectful language and deportment to senior enlisted soldiers, assault upon a junior enlisted member by pointing a dangerous weapon at him, and three specifications of wrongful use of provoking words, to include “you're lucky the unit took my weapon. I don't know what I would do if I had it,” “I'm glad that more American soldiers were killed,” “would it be wrong to want terrorists to blow up this base,” and, “I would like to make a napalm bomb and explode it over certain locations so that it would stick to and kill certain people.” You again submitted a voluntary request for SILT, which was approved, and you were again discharged under OTH conditions, on 2 March 2004, with an “RE-4” 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 to upgrade your OTH discharge in lieu of trial by court-martial to “Honorable” and to change your separation code to “MBK1” and

your reentry code to “RE-1A,” as well as your contentions that you suffered “chronic mental illness” that made you act inappropriately during your military service. You state that, although you were diagnosed during your military service, you never received help because the doctors said that “personality disorders are chronic patterns of behavior not amenable to treatment routinely provided” by military health care. You feel that, if the doctor’s recommendation to separate you had been followed earlier on [after your 1994 mental health evaluation], you never would have been in the situation which resulting in your OTH discharge. To this extent, the Board assumes you are referring to your OTH discharge from the Marine Corps rather than your subsequent OTH discharge from the ARNG, regardless of the nearly identical circumstances of both discharges. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

Because you also contend that a mental health (MH) condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

The Petitioner submitted a VA rating letter which indicates 70% service connection, but does not list conditions/diagnoses. He submitted several outpatient records from ██████████ dating from May to August 2022 where he was diagnosed with Generalized Anxiety Disorder, Depressive Disorder Unspecified, and R/O [rule-out] Social Anxiety Disorder. Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated during several psychological evaluations. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose to the mental health clinician, and the psychological evaluation performed by the mental health clinician. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service, since they are not typically amenable to treatment within the operational requirements of Naval Service. Although there is evidence that he has been diagnosed with mental health conditions other than Personality Disorder post-service, these diagnoses are temporally remote to his enlistment, and his behaviors and misconduct during service are accurately reflected by Personality Disorder NOS with Passive Aggressive and Narcissistic Features.

The AO concluded, “it is my considered clinical opinion there is insufficient evidence of a mental health condition other than Personality Disorder that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition.”

In response to the AO, you submitted additional information discussing specific issues addressed within the AO as well as an assertion that your missing or lost medical records from 1994 would support your contention that you should have been discharged for mental health prior to your 1997 reenlistment. However, after reviewing your submission, the AO found that your rebuttal did not alter the original advice regarding the nature of your PD or your responsibility for your behavior in committing repeated misconduct.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SILT request, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board also noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and, more likely than not, would have resulted in a punitive discharge and extensive punishment at a court-martial. Therefore, the Board determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and likely punitive discharge. Further, the Board strongly concurred with the AO in regard to your PD diagnosis during your Marine Corps service, as well as concurring with both the AO and your in-service mental health providers that the nature and severity of your PD is not something amenable to treatment within the operational requirements of military service. Likewise, the Board noted that your behavior during your subsequent ARNG enlistment, also addressed in detail within the AO, appears to have continued the same pattern of unsuitable behavior. The Board further concurred that you were found mentally responsible for your behavior and misconduct, as documented within the AO, on multiple occasions during repeated provision of mental health services. As a result, the Board concluded that your contended post-discharge diagnoses did not contribute to the misconduct which resulted in your SILT under OTH conditions from the Marine Corps.

The Board also noted that your rebuttal asserts your discharge was unfair because you should have received a discharge for unsuitability due to your PD diagnosis in 1994. In this regard, the Board observed that you not only voluntarily reenlisted in 1997, nearly 3 years after your initial mental health evaluation in 1994, but also subsequently sought service in the ARNG after your OTH discharge from the Marine Corps. Given your repeated efforts to continue serving during a nearly 10-year period after your initial 1994 mental health evaluation, the Board found your contention, specifically that it was unfair not to discharge you in 1994, to be without merit. Rather, the Board found that your continued efforts to continue serving were consistent with the observations of your 30 April 1997 mental health evaluation, in that it noted your attempts to present yourself in an overly positive light by minimizing faults and denying psychological problems, and, based on the detailed explanation provided by the AO regarding the nature of your PD diagnosis, that your behavior was again consistent with your PD.

With respect to other considerations of clemency factors, the Board found that your continued, highly similar aggressive misconduct in the ARNG, following your Marine Corps discharge, weighed heavily against evidence of good character or rehabilitation. Upon consideration of the sexual nature of many of the offenses addressed in the charges for which you requested SILT from the Marine Corps, the Board concluded that the changes in policy and the overall perspective regarding such offenses today, rather than being viewed as less serious, would likely result in much more severe consequences; therefore, the Board found no inequity the fact that you were able to avoid trial by court-martial and a likely conviction for offenses which, today, would be considered sexual misconduct of a nature which could result in sex-offender registration. Likewise, given the extraordinary nature of the threats of generalized violence you outlined to your mental health provider and later reiterated during your ARNG service, the Board again found that you behaved consistently with the aberrant features of your PD NOS with

