



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

Docket No. 8007-22

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 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 6 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 provided the opportunity to respond to the AO, you chose not to do so.

You enlisted in the United States Marine Corps and commenced a period of service on 7 May 1973. On your enlistment application you acknowledged pre-service drug use. On 1 November 1973, you were arrested by civilian authorities for drunkenness.

On 13 February 1974, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 113, for sleeping while on post. On 28 January 1975, you received your second NJP for violation of UCMJ Article 86, for a three-day period of unauthorized absence (UA). You did not appeal these NJPs. On 15 February 1975, you were arrested and convicted by civilian authorities on charges of driving under the influence of alcohol (DUI).

On 11 June 1975, you received your third NJP for violation of UCMJ Article 86, for a four-day period of UA. You did not appeal this NJP. On 4 May 1976, you were found guilty at Special Court Martial (SPCM) for violating UCMJ Article 86, for a 153 day period of UA. You were sentenced to 60 days of confinement, forfeitures of pay, reduction in rank to E-1, and a Bad Conduct Discharge (BCD).

Prior to your discharge, on 7 September 1976, you received your fourth NJP for violations of UCMJ Article 128, for assault, and Article 91, for disrespect and disobedience by entering the Enlisted Club against orders. On 23 November 1976, you received your fifth NJP for violations of UCMJ Article 86, for three periods of UA totaling three days, Article 91, for disobedience by not getting a haircut and disrespect by striking and spitting on a superior, and Article 134, for drunk and disorderly conduct. You did not appeal these NJPs. On 23 February 1977, you were arrested by civilian authorities and placed in custody on charges of armed robbery.

On 28 April 1977, you received a separation physical in which you denied any mental health symptoms and reported that you were “in good health.” On 8 June 1977, you received a psychiatric evaluation in which the medical provider notes that you “showed no signs of thought disorder nor psychosis,” and notes “an immature personality and situational adjustment reaction.” Ultimately, you were discharged from the Marine Corps, on 11 July 1977, with a BCD as a result of SPCM and assigned an RE- 4 reentry 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 you suffered from undiagnosed PTSD and other mental health conditions, and (c) your assertion that your alcohol use caused your misconduct. For purposes of clemency and equity consideration, the Board noted you did not provide documentation related to your post-service accomplishments or character letters.

In your petition you contend that you suffered from undiagnosed PTSD and other mental health conditions while in service, which may have mitigated the circumstances of your discharge. You explain that you joined the Marines when you were young and became an alcoholic, which led to your misconduct. 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 19 January 2023. The Ph.D. noted 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. When evaluated prior to separation, he denied mental health symptoms. 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 his misconduct. Additional records (e.g., post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The Ph.D. concluded, “it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition may be attributed to military service. There is

insufficient evidence his misconduct could be attributed to PTSD or another 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 the medical issues that impacted your conduct. Specifically, the Board felt that your misconduct, as evidenced by your five NJPs, SPCM, and numerous civilian arrests outweighed these mitigating factors. The Board considered the seriousness of your repeated misconduct and the fact that it involved DUIs, an assault, and periods of UA. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command. The Board determined that your conduct was contrary to Marine Corps values and policy and posed an unnecessary risk to the safety of fellow Marines.

In making this determination, the Board concurred with the advisory opinion that there is no evidence that you were diagnosed with a mental health condition in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition, other than substance dependence. Review of your record shows pre-service alcohol abuse, which continued while in service. The Board noted that your psychiatric evaluation and your separation physical noted no psychiatric or neurologic conditions or symptoms, and on the contrary, reported that you were in good health. Moreover, the Board observed that you did not submit any clinical documentation or treatment records, either in-service or post-service, to support your claims of PTSD or other mental health condition. As a result, the Board concluded that your misconduct was not due to mental health-related symptoms. The Board found that your active duty misconduct 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. The Board felt that you received advice from qualified counsel through the court martial process and were aware of your rights. As a result, the Board concluded that your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD, as issued by the court. 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, _____

3/7/2023



Executive Director

Signed by: █