



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



Docket No. 8911-22

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 15 May 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). The Board also considered an advisory opinion (AO) from a qualified mental health professional dated 15 March 2023. Although you were provided an opportunity to comment on the AO, you chose not to do so.

You entered active duty with the Marine Corps on 28 February 1977. On 11 April 1977, you received non-judicial punishment (NJP) for theft of \$12 from another Marine. On 19 July 1979, a summary court-martial (SCM) convicted you of failure to go at time prescribed to appointed place of duty, disrespect toward a commissioned officer, disobeying a lawful order from a commissioned officer, disobeying a lawful order from a non-commissioned officer (NCO), disrespectful in language toward an NCO, and failure to obey a lawful order or regulation. On 7 August 1980, a special court-martial (SPCM) convicted you of UA totaling 54 days, disrespect toward a commissioned officer, and communicating a threat to a commissioned officer. You were

sentenced to confinement of four months, forfeiture of pay, reduction to E-1, and a Bad Conduct Discharge (BCD). After the BCD was approved at all levels of review, on 17 December 1981, you were so discharged.

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 discharge and contention that you incurred mental health concerns, due to not being able to sleep and suffering for anxiety and lack of concentration, which might have mitigated the circumstances that led to your BCD character of service. You contend that you were exposed to contaminated water, falsely accused of charges at your SPCM, did not receive legal representation, and was held in confinement past your discharge date. 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's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 15 March 2023. The AO stated 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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no evidence in support of his claims. Unfortunately, the available records are not sufficiently detailed to establish clinical symptoms in service or a nexus with his misconduct. Additional records (e.g., complete 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 AO concluded, "it is my clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJP, SCM, and SPCM, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative effect it had on the good order and discipline of your unit. The Board also determined your conduct showed a complete disregard for military authority and regulations. The Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. Further, the Board noted you provided no evidence to substantiate your contentions. Additionally, contrary to your contention that you did not have legal representation, the record clearly shows that counsel represented you during your SPCM conviction. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD characterization. Even in light of the Wilkie Memo and reviewing the record liberally and 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 your request does not merit relief.

Regarding your claim of contaminated water at Camp Lejeune, Public Law 112-154, "Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012," requires the Veterans Administration to provide health care to veterans with one or more of 15 specified illnesses or conditions resulting from exposure to contaminated water. The Board recommends you contact the nearest office of the Department of Veterans Affairs (VA) concerning your right to apply for benefits or appeal an earlier unfavorable determination.

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,

5/26/2023

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Executive Director

Signed by: █