



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

█
Docket No. 9056-22
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 5 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). Additionally, the Board also considered the advisory opinion (AO) furnished by a qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

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

You enlisted in the U.S. Marine Corps on 30 October 1976. Your pre-enlistment physical examination, on 29 October 1976, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 3 July 1978, you received non-judicial punishment (NJP) for three separate specifications of unauthorized absence (UA). On 27 July 1978, you commenced a period of UA that terminated after five days on 1 August 1978.

On 7 August 1978 you commenced another UA, and on 8 September 1978 your command declared you to be a deserter. Your UA finally terminated after 718 days, on 25 July 1980, with your surrender to military authorities. However, on 22 August 1980, you commenced another UA that terminated after four days on 26 August 1980.

On 6 October 1980, you commenced yet another UA, and on 8 November 1980 your command declared you to be a deserter. Your UA finally terminated on 30 March 1992 after 4,193 days.

Following your return to military authorities, you submitted a voluntary written request for an administrative discharge for the convenience of the government in lieu of trial by court-martial for your multiple UAs. Prior to submitting this voluntary discharge request you presumably conferred with a qualified military lawyer, at which time you would have been advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Ultimately, on 29 May 1992 you were separated from the Marine Corps with an Other Than Honorable (OTH) discharge characterization and assigned an RE-4 reentry code.

On 20 March 2002, the Naval Discharge Review Board denied your initial application for relief. On 4 October 2005, this Board denied your discharge upgrade petition. This Board again denied your subsequent petitions on 11 February 2015, 11 September 2018, and 13 August 2019.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, 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 dealing with an abusive father and your mother and sister would call begging you to come home and protect them from his abuse, (b) your commanding officer granted you the time to go but never put it in writing, and (c) outstanding post-service conduct. For purposes of clemency and equity consideration, the Board noted you submitted both Department of Veterans Affairs (VA) and civilian medical records, and multiple character reference 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 21 March 2023. The Ph.D. stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. Post-service, the VA has provided treatment for mental health conditions attributed to personal stressors experienced during military service. A

civilian clinician has noted a diagnosis of PTSD related to military service. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, given his military performance prior to the onset of UA and his extensive absences once he began to UA. Additional records (e.g., complete 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 post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is post-service evidence from the VA of mental health conditions that may have been exacerbated by military service. There is insufficient evidence to attribute his misconduct to PTSD or another 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 of any nexus between any purported mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct forming the basis of your discharge. As a result, the Board concluded that your serious misconduct was not due to mental health-related conditions or symptoms. Moreover, 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 reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also concluded 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 observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 3.42 in conduct. Marine Corps regulations in place at the time of your discharge recommended a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your cumulative misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your pattern of serious misconduct and further justified your OTH characterization.

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 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. The simple fact remains is that you left the Marine Corps while

you were still contractually obligated to serve and you went into a UA status without any legal justification or excuse on no less than five separate occasions totaling approximately 4,922 days. 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 discharge. While the Board carefully considered the evidence you submitted in mitigation, 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. Ultimately, the Board concluded the mitigation evidence you provided was insufficient to outweigh the seriousness of your misconduct. 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,

5/9/2023

