



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

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Docket No. 9102-22

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 1 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 the advisory opinion (AO) furnished by a qualified mental health professional, which was previously provided to you. 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 and began a period of active duty on 10 May 1977. On 30 August 1977, you received Non-judicial Punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 86, for a 4 hour period of unauthorized absence (UA), and Article 92, for failure to obey an order. On 12 July 1978, you were awarded your second NJP for violating UCMJ Article 86, for four specifications of UA totaling 13 days. On 30 January 1979, you were awarded your third NJP for violating UCMJ Article 86 for a 17 hour period of UA. On 24 March 1979, you received your fourth NJP for violating UCMJ Article 86,

for four specifications of UA totaling 8 hours. On 5 June 1979, you were given a Page 11 counseling, putting you on notice that further misconduct would not be tolerated and could result in your separation from service. On 13 June 1979, you received your fifth NJP for violating UCMJ Article 86, for two specifications of UA from your appointed place of duty, and Article 91, for disrespect. On 27 July 1979, you received your sixth NJP for violating UCMJ Article 91, for two specifications of disobedience and disrespect, and Article 108, for damage to government property. You did not appeal any of these NJPs.

On 9 September 1979, you absented yourself from your command without authorization for a period of 2 days. On 26 September 1979, you again went UA, this time for a period of 20 days. On 2 January 1980, you went UA for a period of 349 days, not returning to military control until 17 December 1980. On 19 December 1980, you requested discharge for the good of the service (GOS) in lieu of trial by court martial. You reviewed your rights, consulted with qualified military counsel, and acknowledged that your discharge under Other Than Honorable (OTH) conditions would deprive you of almost all veterans' benefits. Your commanding officer accepted your discharge request, directing your administrative discharge from the service. Prior to being separated, you received a physical examination, on 20 February 1981, in which you denied mental health symptoms and report "I am in good health." On 23 February 1981, you were discharged from the Marine Corps for the "Good of the Service" with an OTH characterization and an "RE-4" reenlistment 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: (a) your desire to upgrade your discharge character of service, (b) your contention that you were suffering from undiagnosed mental health issues during service, and (c) the impact that your mental health issues may have had on your behavior. For purposes of clemency and equity consideration, the Board noted that you did not provide any evidence related to post-service accomplishments or character letters.

In your petition for relief, you assert that you were suffering from undiagnosed mental health issues during service and that your "memory is not so good." As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 20 March 2023. The AO 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. 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 medical records in support of his claims. Unfortunately, available records are 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) may aid in rendering an alternate opinion.

The AO concluded, “it is my considered clinical opinion there is post-service 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your six NJPs and GOS request, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your repeated misconduct and its impact on the mission. The Board 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. Additionally, the Board concurred with the AO that although there is no evidence of a mental health condition that may be attributed to military service, and that there is insufficient evidence to support a nexus between your misconduct and any mental health symptoms. Your misconduct began almost immediately after your enlistment and spanned your entire term of service. Further, your discharge request does not mention mental health concerns or the impact of mental health symptoms as a cause of your misconduct. The Board determined the record clearly reflected 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 demonstrated that you were mentally responsible for your conduct and that you should therefore be held accountable for your actions.

Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans’ benefits, or enhancing educational or employment opportunities. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. 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,

5/9/2023

