



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



Docket No. 261-23
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 12 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 originally enlisted in the U.S. Marine Corps and entered active duty on 18 June 1973. Your pre-enlistment physical examination, on 19 April 1973, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. Your reenlistment physical examination, on 13 January 1977, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. Following your Honorable discharge, you immediately reenlisted on 15 January 1977 for four years.

On 30 November 1977, you underwent a psychiatric consultation. The Medical Officer (MO) diagnosed you with an immature personality disorder with moderate impairment.

On 6 January 1978, you commenced a period of unauthorized absence (UA). On 2 February 1978, your command declared you to be a deserter. Your UA terminated after 171 days, on 26 June 1978, with your surrender to military authorities in █.

On 5 July 1978, you commenced another UA. However, you never returned to military authorities prior to your discharge.

On 12 October 1983 the Marine Corps notified you of administrative separation proceedings by reason of misconduct due to being absent without leave. The Marine Corps notified you using registered mail, however, you failed to submit a reply exercising your rights in connection with the proposed separation. Your failure to timely respond acted as a waiver of all rights in connection with your separation. Ultimately, on 1 February 1984, you were separated from the Marine Corps in absentia for misconduct with an under Other Than Honorable conditions (OTH) discharge characterization and assigned an RE-4 reentry code. Your "time lost" due to your last UA was approximately 2,038 days.

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) your OTH has resulted in an injustice and you are still estranged from your family because of what happened, (b) in 1977 you tried to get help from the Marine Corps for tremors, anxiety, and gastrointestinal problems, and were evaluated by a psychiatrist and placed on valium, (c) you were constantly being abused by your Warrant Officer, (d) you now receive Department of Veterans Affairs (VA) mental health treatment in █ for depression, (e) if the military had helped you in 1977 and recognized you needed better care maybe things would have turned out better for you, and (f) you will need medication and VA care for the rest of your life. The Board noted for clemency and equity purposes you submitted both VA and civilian medical records, an Honorable discharge certificate, a good conduct award certificate, a civilian retirement plaque, a letter from your spouse, and a fire department identification card.

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 31 March 2023. The Ph.D. stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. It is possible the symptoms identified as problematic personality characteristics during military service have been re-conceptualized as other mental health concerns by the VA. While it is possible that his initial decision to UA may be attributed to mental health concerns, it is difficult to attribute his continued UA for an extended period to a mental health condition. 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 post-service evidence from the VA of mental health conditions that may be attributed to military service. There is insufficient evidence to attribute all of his misconduct to a 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 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 two separate occasions totaling approximately 2,209 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. 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 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,

5/15/2023

█

Deputy Director

█