



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

█
Docket No. 277-23
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 the 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 to 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) of a qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal to the AO, you chose not to do so.

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

You enlisted in the Marine Corps as a minor, with a waiver for pre-service drug use, and began a period of active duty on 30 December 1980. You served for over a year without incident; however, on 3 February 1981, you were subject to nonjudicial punishment (NJP) for having willfully disobeyed a lawful order to get dressed and fall out with your platoon, and your punishment included correctional custody.

You continued to serve approximately another year before receiving administrative counseling for several alleged offenses, include absenting yourself without authority from your appointed place of duty, for which you were subject to a second NJP in February 1982, which resulted in your permanent decertification from a Personnel Reliability Billet.

You were then counseled in March 1982 for your inability to report to your work section at the time prescribed, subject to a third NJP in April 1982 for wrongfully urinating on the floor of the squadron barracks, and again counseled for your involvement in an alcohol-related incident and for performance deficiencies, to include unwillingness to follow instructions without maximum supervision.

On 12 July 1982, you were notified of the recommendation for your discharge under other than honorable conditions for the reason of misconduct due to your frequent involvement of a discreditable nature with military authorities. You requested to exercise your right to representation by legal counsel at a hearing before an administrative separation board. On 26 October 1982, your administrative board convened and found that the basis for separation was substantiated. Following legal review of the administrative board's recommendation for your discharge under Other Than Honorable (OTH) conditions, your separation was approved, and you were discharged for a pattern of misconduct on 23 December 1982.

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 your contentions that you were young at the time of your discharge, you were suffering from pre-existing behavioral issues which had been diagnosed by the state of ██████████ during your childhood, the behavioral issues were not diagnosed at the time you entered the military, and you suffered from a misdiagnosed or undiagnosed mental illness along with post-traumatic stress disorder (PTSD). For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

Because you contend that PTSD or another mental health condition may have contributed to the circumstances of your discharge, the Board also considered the AO. 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. Although there is behavioral evidence in his record of problematic alcohol use, he denied an alcohol use disorder during his administrative review board. 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 evidence in support of his claims. Unfortunately, his personal statement is 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 AO concluded, “it is my clinical opinion there is insufficient of a diagnosis of PTSD or another mental health condition that may be attributed to 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. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition. Additionally, the Board observed that, while a pre-existing mental health condition might potentially result in either an erroneous or fraudulent enlistment depending upon whether it was known and/or disclosed at the time of your initial entry into service, such pre-existing conditions would not normally mitigate in-service misconduct within the scope of the guidance in the memoranda referenced herein. 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 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 the 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 is attached 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,

5/18/2023

█

Executive Director

Signed by: █