



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

█
Docket No. 0570-23

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 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 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 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, 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)/mental health condition (MHC) (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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an advisory opinion (AO) on 7 April 2023. Although you were afforded an opportunity to respond to the AO, you chose not to do so.

You enlisted in the U.S. Marine Corps and began a period of active duty on 17 July 1972. On 4 June 1973, you received your first nonjudicial punishment (NJP) for two (2) specifications of violating a lawful order. From 5 December 1973 to 9 August 1974, you received four (4) additional NJPs for infractions ranging from failing to go to your appointed place of duty to additional infractions of violating lawful orders. On 29 July 1974, a Naval Investigative Service (NIS) Report of Investigation documents you professed to pre-service marijuana use on several occasions and to the occasional use of marijuana since enlisting in the USMC.

On 16 August 1974, you were notified of your pending administrative separation by reason of convenience of the government due to minor disciplinary infractions, at which time you waived your right to submit a statement on your own behalf. On 11 September 1974, a certificate of psychiatric evaluation captures you had no psychiatric pathology/disorder. On 19 September 1974, your Commanding Officer (CO) recommended to the separation authority that you be expeditiously discharged for the convenience of the government. On 1 October 1974, you received a sixth and final NJP for disobeying a lawful order by a superior NCO. On 20 December 1974, you were discharged with a General (Under Honorable Conditions) (GEN) characterization of service for convenience of the government.

The Board carefully weighed 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 be compensated for your pain and suffering amid your contentions that you were discharged due to reprisal for reporting the misbehavior of others. Specifically you wrote a letter to the Commandant of the Marine Corps (CMC) reporting commissioned officers were drinking and gambling in the non-commissioned officer's club and were subsequently threatened and harassed. You further contend, as a result of the aforementioned, you incurred mental health concerns (MHCs). For purposes of clemency and equity consideration, the Board noted you did not provide documentation describing post-service accomplishments or advocacy letters.

Based on your assertions that you incurred mental health concerns during military service, which might have mitigated the circumstances of your discharge, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

During military service, the Petitioner was appropriately referred, properly evaluated, and received no mental health diagnosis. This lack of 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 mental health clinician. He has provided no post-service evidence of a mental health condition. Unfortunately, available records are insufficient to establish clinical symptoms during military service or provide a nexus with his misconduct. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and onset) 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 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. Additionally, character of service is based, in part, on proficiency and conduct trait averages which are computed from marks assigned during periodic

evaluations. Your conduct average was 3.7. An average of 4.0 in conduct was required at the time of your separation for a fully Honorable characterization of service. Furthermore, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. Finally, the Board noted you provided no evidence to substantiate your contentions. As a result, the Board concluded significant negative aspects of your service outweighs the positive aspects and continues to warrant a GEN 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,

5/26/2023

█

Executive Director

Signed by: █