



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. 628-23
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 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 an advisory opinion (AO) furnished by qualified mental health provider. Although you were afforded an opportunity to submit an AO rebuttal for consideration, you chose not to do so.

You enlisted in the U.S. Marine Corps and entered active duty on 27 August 2001. Your pre-enlistment physical examination, on 15 December 2000, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 6 December 2002, your command issued you a "Page 11" retention warning (Page 11) documenting a recent absence from your appointed place of duty. The Page 11 expressly warned you that another failure to be at an appointed place of duty could result in further administrative action of non-judicial punishment (NJP).

On 10 January 2003, you received NJP for an unauthorized absence (UA) lasting two days. You did not appeal your NJP.

Between 22 January 2003 and 4 September 2003, you deployed to ██████████ and ██████████ in support of ██████████ and ██████████. During your deployment you received NJP, on 3 August 2003, for failing to obey a lawful order. You did not appeal your NJP.

On 13 November 2003, your command issued you a Page 11 documenting your receipt of an on-base speeding ticket. You did not submit a Page 11 rebuttal statement.

On 26 November 2003, you commenced a period of UA. On 26 December 2003, your command declared you to be a deserter. Your UA terminated after 447 days with your arrest by civilian authorities in ██████████.

On 31 March 2005, pursuant to your guilty plea you were convicted at a Special Court-Martial (SPCM) for your 447-day UA. You were sentenced to confinement for sixty days, a reduction in rank to the lowest enlisted paygrade (E-1), and a discharge from the Marine Corps with a Bad Conduct Discharge (BCD). On 18 August 2005, the Convening Authority approved the SPCM sentence as adjudged. Upon the completion of appellate review in your SPCM case, on 2 October 2007, you were discharged from the Marine Corps with a BCD and assigned an RE-4 reentry 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 Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and change your narrative reason for separation along with your separation code. In support of your request, you contend that: (a) your mental health was a contributing factor to the behavior leading to your discharge from the Marine Corps, (b) evidence of your mental health conditions contributed significantly to the argument that correction of your discharge is warranted for reasons of clemency, especially considering the increased awareness of mental health conditions and how they impact service members, (c) your mental health diagnoses provides a significant mitigating fact regarding the misconduct for which you were discharged, (d) your undiagnosed mental health conditions led to your inability to conform to military life as young Marine, and which ultimately led to your discharge, (e) it is important to consider the mitigating factors of your age, level of maturity, mental health illness, and how the military recognizes and treats individuals with mental health issues today as opposed to 2007, (f) you incurred PTSD from your Kuwait/Iraq deployment, (g) your misconduct did not involve any violence toward others, and did not involve use of illegal drugs, alcohol or other illegal substances, (h) the length of time since your misconduct and the your acceptance of responsibility indicate that relief is in the interests of clemency, (i) your post-service conduct and evidence of rehabilitation indicates that relief is warranted, and (j) your character letters supported that you have been a positive, contributing member of society who has had a positive influence on others in spite of your mental health conditions and prior misconduct. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application including your character 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 12 April 2023. The Ph.D. 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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Post-service, he has received a diagnosis of PTSD and another mental health condition that may be attributed in part to military service. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, particularly given UA prior to his deployment and his extended UA following deployment. Additionally, it is difficult to attribute his disobedience to symptoms of PTSD or anxiety. 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 a Veterans Center of a diagnosis of PTSD that may be attributed to military service in part. 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 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 that formed the basis of your discharge. As a result, the Board concluded that your 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 determined 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 also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that, despite your contentions, this was not a case warranting any clemency as you were properly convicted at a SPCM of serious misconduct. The simple fact remained is that you left the Marine Corps while you were still contractually obligated to serve and you went into a UA status on no less than two separate times without any legal justification or excuse for a total of approximately 449 days. As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct and

disregard for good order and discipline clearly merited your BCD discharge. While the Board carefully considered the evidence you submitted in mitigation, 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. 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, _____

5/17/2023

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Deputy Director

Signed by: █