



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. 1256-23
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 2 October 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional dated 21 August 2023. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Marine Corps and began a period of active duty on 18 August 1987. Upon your enlistment, you received a waiver for pre-service charges including involuntary manslaughter and assault. On 24 June 1988, you were counseled concerning violation of COMNAVFORJAPANINST 4060.13 by exceeding authorized monthly limit (2 Gallons) of alcohol by purchasing 2.5 gallons during the month of April 1988. You were advised that failure to take corrective action could result in disciplinary action. On 28 July 1988, you were recommended for Level I alcohol outpatient treatment as a result of your alcohol abuse. On

1 September 1988, you were counseled for poor judgement, lack of discipline and misconduct. You were advised that failure to take corrective action could result in administrative separation. On 7 September 1988, you received nonjudicial punishment (NJP) for two instances of willful disobedience of a lawful order. On 21 February 1989, you were diagnosed by a medical officer with Alcohol Dependence and Antisocial Personality Disorder. On 25 May 1989, you were convicted by special court martial (SPCM) for two specifications of assault. You were sentenced to a Bad Conduct Discharge (BCD), reduction to the inferior of E-1, confinement for a period of five months, and forfeiture of pay in the amount of \$466.00 for a period of five months. On 22 July 1989, you were diagnosed by a medical officer with alcohol dependency. On 21 August 1989, you signed a waiver of clemency review. On 13 October 1989, your SPCM sentence was approved. On 10 April 1990, the Naval Clemency and Parole Board denied your request for restoration. On 22 August 1990, your SPCM sentence was affirmed. On 29 January 1991, the separation authority directed the execution of your discharge from the Marine Corps with a BCD characterization of service. On 22 April 1993, you were so discharged.

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 for a discharge upgrade and contentions that: (a) your penalty for your misconduct was overly excessive, unjust, and based on race, (b) you were not given a fair trial and claim that your chain of command wanted to make you an example of based off race and prejudice, and (c) you were given a diagnosis of Post-Traumatic Stress Disorder (PTSD) by a psychiatrist and have been a model citizen up to this date. For purposes of clemency and equity consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition other than Alcohol Dependence and Antisocial Personality Disorder in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He demonstrated a long pattern of assault that started pre-service which is consistent with antisocial personality disorder. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., postservice medical records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) are required to render an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is insufficient 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and SPCM, 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, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. As explained in the AO, you provided no medical evidence in support of your claims and your personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with your misconduct. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit. Finally, the Board noted you provided no evidence to substantiate your contentions of unfair treatment. As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD. Even in light of the Kurta, Hagel, and Wilkie Memos 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 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,

10/17/2023

