



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. 1465-23
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 limitations 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 13 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 this Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your service 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)/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 an advisory opinion (AO) from a qualified mental health professional. Although you were offered the opportunity to reply to the AO, you chose not to do so.

You enlisted in the United States Army and commenced a period of service on 6 December 1972. During your time in the Army, you received five non-judicial punishments (NJP) covering four violations of Article 86 [unauthorized absence (UA)], two violations of Article 90 [disobedience], one violation of Article 92 [disobedience], and three violations of Article 134 [general article], ranging from carrying a concealed weapon to threatening a superior. On 10 December 1973, you began a period of UA from your unit and remained absent until 8 March 1974, for a total period of 88 days. On 11 March 1974, you requested a "Discharge for the Good of the Service" in lieu of trial by Special Court Martial (SPCM). In connection with this request, you acknowledged your rights and the fact that you would receive an "undesirable discharge." On 29 April 1974, you were

discharged from the Army with an Other Than Honorable (OTH) characterization of service and assigned an RE-4 reenlistment code.

You subsequently enlisted in the United States Marine Corps and commenced a period of service on 9 December 1975. On your enlistment application, you enlisted under an alias and failed to disclose your prior service in the Army. On 9 January 1976, you underwent a psychiatric evaluation wherein it was noted that “[t]his Private is dissatisfied with USMC and training environment. He is actively seeking discharge and demonstrated this. No psych diagnosis or disposition.” On 26 January 1976, you submitted a voluntary statement in which you admit “I did not tell my recruiter that I had any prior service and also that I did have a wife and kids. I entered the service falsely.... I enlisted under my son’s name....” As a result, on 23 February 1976, you were notified that you were being processed for an administrative discharge for fraudulent enlistment by concealment of pre-service U.S. Army, enlisting under an alias, and failing to divulge your total number of dependents. You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board.

Prior to your discharge, you were awarded three NJPs for violating Uniform Code of Military Justice (UCMJ) Article 91, for disrespect in actions towards a Staff Sergeant, Article 128, for assaulting a fellow Marine, and Article 86, for UA from 27 February 1976 to 1 March 1976. Ultimately, on 5 March 1976, you were discharged from the Marine Corps due to fraudulent enlistment with an OTH characterization of service and assigned an RE-4 reenlistment code.

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire to upgrade your characterization of service, (b) your desire to qualify for disability benefits, (c) your assertion that you were struggling with undiagnosed mental health conditions during your service due to childhood abuse, and (d) the impact that your mental health had on your conduct. For purposes of clemency consideration, the Board noted that you did not provide documentation related to your post-service accomplishments or character letters.

In your request for relief, you contend that you were suffering from undiagnosed mental health issues due to childhood abuse, which led to your misconduct. In support of your request, you submitted a February 2010 mental health evaluation, in which you were diagnosed with Bipolar Disorder Not Otherwise Specified (NOS) and Antisocial Personality Disorder. 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 28 August 2023. The Ph.D. noted 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 been diagnosed with a mental health condition that is temporally remote to

military service and appears unrelated. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service, or provide a nexus with his misconduct, given his behavioral history. 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 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 the potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about undiagnosed mental health issues and the possible adverse impact on your service. Specifically, the Board felt that your misconduct, as evidenced by your three NJPs and admission of fraudulent enlistment, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the likely negative impact that your conduct had on the good order and discipline of your command. The Board determined that such misconduct is contrary to Marine Corps values and policy and places an undue administrative burden on the Marine Corps.

In making this determination, the Board concurred with the advisory opinion that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. This was supported by the psychiatric evaluation conducted on 9 January 1976, in which the treatment provider found "no psychiatric diagnosis or disposition." The Board noted that you did not report that you were suffering from any mental or physical conditions that would have triggered referral for treatment. Further, the Board agreed with the AO that your post-service diagnosis is temporally remote to your service, appears unrelated to your service, and fails to draw a sufficient nexus to your underlying misconduct. As a result, the Board concluded that your misconduct was not due to mental health-related symptoms. The Board found that your active duty 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 otherwise not be held accountable for your actions. The Board concluded that your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization of service. While the Board carefully considered the evidence you submitted in mitigation, 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. 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,

10/17/2023

