



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. 1868-23

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.

A three-member panel of the Board, sitting in executive session, considered your application on 16 October 2023. The names and votes of the members of the panel 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 Secretary of Defense Memo of 13 Sep 14 (Hagel Memo), Principal Deputy Under Secretary of Defense Memo of 24 Feb 16 (Carson Memo), Under Secretary of Defense for Personnel and Readiness Memo of 25 Aug 17 (Kurta Memo), and Under Secretary of Defense Memo of 25 Jul 18 (Wilkie Memo). Additionally, the Board also considered the advisory opinion furnished by a qualified mental health professional dated 1 September 2023. Although you were provided an opportunity to respond to the advisory opinion, you chose not to do so.

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

You entered active duty in the United States Marine Corps on 25 April 1984. On 12 December 1984, you received non-judicial punishment for violating Uniform Code of Military Justice Article 86, for seven days of unauthorized absence, which you did not appeal this punishment. On 29 March 1985, you were found guilty at Special Court Martial of violating Uniform Code of Military Justice Article 121, for stealing United States currency valued at \$160, and Article 123a,

for 14 specifications of writing checks with insufficient funds. You were sentenced to confinement for 45 days, forfeitures of pay, and a Bad Conduct Discharge. On 8 July 1985, the Naval Clemency and Parole Board informed you that you would not be granted clemency and denied your request for restoration. On 23 July 1985, the Navy-Marine Corps Court of Military Review affirmed the findings and sentence as approved by the subordinate authority. You were served the decision of the Court of Military Review on 22 August 1985 and did not petition for a grant of review before the Court of Military Appeals. On 11 September 1985, you began a period of unauthorized absence, and remained absent until 20 July 1986 after being apprehended by civilian authorities, for a total period of 312 days. On 14 August 1986, you were discharged from the Marine Corps with a Bad Conduct Discharge as issued by the court and assigned an RE-4 reenlistment code. The Board noted that your DD Form 214, Certificate of Release or Discharge from Active Duty incorrectly listed “Misconduct-pattern of misconduct (admin discharge board required but waived)” as your narrative reason for separation vice “As a result of a Special Court Martial.”

In your request for relief, you contend that you were not given a reason why you received a Bad Conduct Discharge. You assert that you received disability for post-traumatic stress disorder and other mental health issues from your service in the Marines.

As part of the Board review process, the Board’s licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an advisory opinion dated 1 September 2023. The Ph.D. noted in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition or harassment while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. 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., post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The Ph.D. concluded, “[b]ased on the available evidence, 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 review of your official military personnel file, the Board noted that your DD Form 214 contains an administrative error. Specifically, the Board found that your narrative reason for separation was incorrectly listed as “Misconduct-pattern of misconduct (admin discharge board required but waived)” vice “As a result of a Special Court Martial.” In this regard, the Board determined your DD Form 214 should be corrected to reflect the correct narrative reason for separation, separation code, and separation authority. However, since you did not specifically request for this administrative error to be corrected, and this change could ultimately be

perceived negatively, the correction would require you to request said change by submitting a new DD Form 149 to the Board.

In regard to your request for an upgrade of your characterization of service, the Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Secretary of Defense Memo of 13 Sep 14 (Hagel Memo), Principal Deputy Under Secretary of Defense Memo of 24 Feb 16 (Carson Memo), Under Secretary of Defense for Personnel and Readiness Memo of 25 Aug 17 (Kurta Memo), and Under Secretary of Defense Memo of 25 Jul 18 (Wilkie Memo). In this regard, the Board applied liberal consideration to determine whether relief is warranted. The Board concluded that the requested relief is not warranted under the totality of the circumstances. In making this finding, the Board considered the seriousness of your misconduct and found that your misconduct showed a complete disregard for military rules and regulations. Further, the Board also considered the likely negative impact your conduct had on the good order and discipline of your command.

In making this determination, the Board concurred with the advisory opinion that there was no 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. There is no evidence in your service record to support your assertions regarding service-connected mental health conditions. Throughout your disciplinary processing, you never raised concerns of mental health symptoms that would have resulted in mental health referral. After thorough review of the evidence, the Board concluded that your misconduct was not due to mental health-related symptoms, rather, that your active duty misconduct was intentional and willful and demonstrated that you were unfit for further service. Therefore, 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.

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.

11/1/2023

