



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. 2394-23

Ref: Signature Date



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 22 November 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 professional. 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 began a period of active duty service on 26 April 1971. Your pre-enlistment physical examination, on 21 October 1970, and self-reported medical history both noted no psychiatric or neurologic conditions, symptoms, or treatment/counseling history.

On 19 November 1971, you received non-judicial punishment (NJP) for an unauthorized absence (UA), and for insubordinate conduct. You did not appeal your NJP.

On 1 December 1971, your command memorialized an interview with you where you disclosed that you were arrested for automobile theft in September 1969. You also disclosed you were caught again for the same crime and jailed for thirty (30) days. You further disclosed that after your third such offense, you were sent to a juvenile detention facility. Finally, you stated you were again arrested for interstate auto theft, and that you wrecked the stolen car and were hospitalized for one week before being placed in jail for thirty (30) days.

On 3 December 1971, you received NJP for both UA and the willful disobedience of a superior commissioned officer. You did not appeal your NJP. On 14 December 1971, your command issued you a "Page 11" counseling sheet (Page 11) informing you that you were not being recommended for reenlistment due to your frequent involvement with authorities.

On 15 December 1971, you commenced a period of UA. Your command declared you to be a deserter on 20 December 1971. Your UA terminated after twenty-six (26) days with your return to military authorities on 10 January 1972.

On 20 January 1972, you were convicted at a Summary Court-Martial (SCM) for your 26-day UA, and for two (2) separate specifications of willfully disobeying a superior commissioned officer. You were sentenced to confinement at hard labor for thirty (30) days, and forfeitures of pay. The Convening Authority approved the SCM sentence as adjudged.

On 26 January 1972, your command notified you that you were being processed for an administrative discharge by reason of unfitness due for frequent involvement with military authorities (aka "pattern of misconduct"). You waived in writing your rights to consult with counsel and to request a hearing and appear before an administrative separation board. On 13 February 1972, the Staff Judge Advocate for █, █ determined that your administrative separation was both legally and factually sufficient. On or about 18 February 1972, the Separation Authority approved and directed your separation from the Marine Corps for unfitness with an undesirable (aka "under Other Than Honorable conditions" (OTH)) characterization of service. Your separation physical examination, on 24 February 1972 did not note any psychological or neurological issues. Ultimately, on 24 February 1972, you were discharged from the Marine Corps for unfitness due to frequent involvement of a discreditable nature with civil or military authorities with an OTH characterization of service and assigned an RE-4 reentry code.

On 1 December 1975, the Naval Discharge Review Board (NDRB) denied your initial application for discharge upgrade relief. On 30 March 1976, you were discharged from the U.S. Army after only five (5) months of service due to a fraudulent enlistment because you did not disclose your prior Marine Corps service and OTH discharge on your Army enlistment application. On 21 October 1981, the NDRB again denied your discharge upgrade application.

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) you were young when you entered the corps not knowing that this would affect you after you got out, (b) you entered the Army and proved that you could be a good

soldier, (c) you served your country honorably and the record should show that, (d) you strongly regret your negative behavior that led to your discharge, (e) joining during the Vietnam era was overwhelming, (f) you may have acted out due to the mishandling of your emotions and immaturity at the time, (g) post-service you have tried to lead a better life, and (h) you recently retired from the █ hospital after working and helping veterans for the past several years. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application.

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 26 September 2023. The Ph.D. stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition or suffered from PTSD while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition other than “Mild Passive-Dependent Immature Personality Disorder.” 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, “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. 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 your misconduct was not due to PTSD or other mental health-related conditions or symptoms. 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 pattern of 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 observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 3.4 in conduct. Marine Corps regulations in place at the time of your discharge recommended a minimum trait average of 4.0 in conduct (proper military behavior), for a fully Honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your pattern of serious misconduct which further justified your OTH discharge characterization.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. Moreover, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant an OTH characterization. While the Board carefully considered the evidence you submitted in mitigation and commends your post-discharge accomplishments, 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,

11/30/2023

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