



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. 3276-23

Ref: Signature Date



Dear █

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 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 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, 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 enlisted in the United States Marine Corps and began a period of active duty on 13 October 1992. On 13 November 1993, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 86, for a one-day period of unauthorized

absence (UA). On 7 November 1994, you received your second NJP for violation of UCMJ Article 86, for another period of UA. You did not appeal these NJPs. On 18 November 1984, you were formally counseled concerning deficiencies in performance and conduct, specifically your pattern of misconduct as evidenced by your two NJPs. You were notified that these violations reflected poor judgement, cohesion and was an indication of severe lack of discipline.

On 25 April 1995, you received your third NJP for violation of UCMJ Article 86, for two specifications of UA, totaling five days. On 29 June 1995, you received your fourth and final NJP for violation of UCMJ Article 86, for a 20-day period of UA. You did not appeal these NJPs.

On 6 March 1997, you were found guilty at Special Court-Martial (SPCM) of violating UCMJ Article 86, for a period of UA totaling 101 days. You were sentenced to a Bad Conduct Discharge (BCD), forfeitures of pay, and 100 days of confinement. You were placed on appellate leave while your case was under review by the Navy and Marine Corps Court of Criminal Appeals. On 20 March 1998, a Supplemental Court Order was released, stating that the SPCM complied with Article 71(c) and ordered the BCD executed. On the same day, you were discharged from the Marine Corps with a BCD as adjudged at the SPCM and assigned an "RE-4" reentry code.

You previously submitted an application to the Naval Discharge Review Board and were denied relief on 3 September 2009. You also petitioned this Board and were denied relief on 15 August 2019 and 23 November 2022.

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 contention that you were struggling with undiagnosed mental health issues and lacked access to medical treatment, and (c) the impact of your mental health concerns on your conduct. For purposes of clemency and equity consideration, the Board noted you provided documentation related to your post-service accomplishments and character letters.

In your petition, you contend that you were suffering from undiagnosed PTSD and other mental health concerns due to a pre-service car accident, which was exacerbated by in-service experiences, including hazing and witnessing the accidental shooting of a friendly helicopter. You also assert that you incurred depression after being denied leave after your father had a stroke and while you were experiencing unresolved medical ailments. In support of your request, you provided requests for academic accommodations from February and April 2022, listing diagnoses of PTSD and Mood Disorder, with a diagnosis of Bipolar Disorder, to be ruled out, with additional information. You also provided September 2019 to September 2022 medical treatment records, which note a "long history of trauma dating back to childhood...and 2018 he was involved in a motor vehicle accident. He has had discomfort in his knees...since then."

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 17 August 2023. The AO 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. Post-service, he has provided evidence of PTSD and other mental health conditions that are temporally remote to military service and appear unrelated. It is difficult to attribute his misconduct to unrecognized symptoms of PTSD when current records indicate his symptoms became interfering after a 2018 accident. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may contribute to an alternate opinion.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health concern that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your four NJPs and SPCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the impact that your repeated UAs had on the mission. The Board determined that such misconduct is contrary to the Marine Corps values and policy and places an unnecessary burden on fellow service members. The Board felt that you received advice from qualified counsel throughout your court martial and that you were aware of your rights. The Board concluded that your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD, as issued by the court. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade.

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. Throughout your court martial and appellate process, you never raise any issues related to mental health concerns, which would have triggered a mental health referral and assessment prior to your discharge. Your post-service diagnosis of PTSD is temporally remote to your service and fails to draw sufficient nexus to your misconduct. As a result, the Board concluded that your misconduct was not due to mental health-related symptoms. The Board determined the record clearly reflected 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 a BCD as issued by the court.

Lastly, 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. 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,

10/5/2023

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Executive Director

Signed by: █