



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. 3610-23
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 23 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 7 September 2023, which was previously provided to you. 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 25 February 1997. On 10 August 1997, you began a period of unauthorized absence (UA) which lasted 31 days. On 14 October 1997, you received nonjudicial punishment (NJP) for a period of UA and uttering worthless checks in the amount of \$150.00 at the MCX. On the same date, you were counseled concerning your previous NJP and advised that failure to take corrective action could result in administrative separation.

On 22 January 1998, you began a second period of UA which lasted 61 days and resulted in your apprehension by civil authorities. On 3 April 1998, you received a second NJP for a period of UA. On 6 April 1998, you were counseled concerning your previous NJP and advised that failure to take corrective action could result in administrative separation.

On 30 April 1998, the commanding officer of Marines Awaiting Training Company recommended an Other Than Honorable (OTH) discharge characterization by reason of misconduct due to pattern of misconduct. On 6 May 1998, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct, at which point, you decided to waive your procedural rights. On the same date, your commanding officer (CO) recommended an OTH discharge characterization by reason of misconduct due to pattern of misconduct. On 1 June 1998, your administrative separation proceedings were determined to be sufficient in law and fact. On 8 June 1998, the separation authority approved the CO's recommendation and directed your discharge. On 19 June 1998, 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) you were dealing with undiagnosed Post Traumatic Stress Disorder (PTSD) which was partially attributed to witnessing another Marine committing suicide, (b) the effects have been lifelong as you are currently taking medication for PTSD, depression, and anxiety, and (c) you were involved in a farm accident and the road to recovery was a brutal one. 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 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 in service or provide a nexus with his misconduct. Additional records (e.g., postservice mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "there is insufficient evidence of a diagnosis of PTSD or another mental health condition 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. The Board noted that you were given multiple opportunities to correct

your deficiencies but continued to commit misconduct. 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 in service or provide a nexus with your misconduct. 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. 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,

10/31/2023

