



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. 3682-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 Board waived the statute of limitation 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 11 August 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, and applicable statutes, regulations, and policies, to include to 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 determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Marine Corps and, after receiving a moral waiver, for an arrest from smoking on a train, began a period of active duty on 15 October 1982. On 24 October 1983, you absented yourself without authority and were subsequently counseled regarding unauthorized absence (UA). On 28 December 1983, you were administratively counseled for poor attitude, poor performance of duties, disrespect toward a noncommissioned officer, and disobedience of a lawful order. You again absented yourself without authority from 10 January 1984 through 6 February 1984. You were tried by Special Court-Martial (SPCM) on 12 April 1984 and convicted for violations of the Uniform Code of Military Justice (UCMJ) under Article 86 for

your period of UA and under Article 107; however, no punitive discharge was adjudged. After your release from confinement, you were subject to nonjudicial punishment (NJP) for another violation of Article 86 as well as a violation of Article 91 due to striking a sergeant in a commercial clothing store. In August of 1984, you were administratively counselled concerning deficiencies, frequent involvement with military authorities, UA, and “official statements.” On 20 September 1984, you received a second NJP for another violation of Article 86 for being absent without authority from the place of duty at which you were required to be and for a violation of Article 117 after making a provoking gesture toward a corporal. As a result, your commanding officer recommended administrative separation under Other Than Honorable (OTH) conditions by reason of pattern of misconduct, noting that you had failed to respond to previous efforts to assist you in correcting your conduct. You elected to waive your right to an administrative discharge board hearing, as noted by your separation code. ██████████ ██████████ approved your separation, and you were discharged OTH conditions, on 15 November 1984, with proficiency and conduct marks below 4.0.

Your previous application to the Board, wherein you contended that your post-discharge character merited consideration of clemency, was considered on 5 January 2007 and denied.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to correct your DD 214 to an “administrative or medical discharge” and your contentions that the requested connection should be made due to your exposure to toxic water at ██████████ as well as the stress you experienced as a single parent in the infantry. The Board noted you checked the “PTSD” and “Other Mental Health” boxes on your application but provided no evidence in support of either claim. For purposes of clemency and equity consideration, the Board noted you provided medical evidence in support of your ██████████ claim and volunteer letters.

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 and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board noted you were warned of the consequences of your conduct on multiple occasions but continued to commit 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. While the Board carefully considered the evidence you submitted in mitigation, even in light of the Wilkie Memo and reviewing the record 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.

With respect to your contentions being tied to your claim of toxic water exposure, the Board believes that, notwithstanding your OTH discharge, you may be eligible for benefits through the Department of Veterans Affairs (VA) for certain presumptive conditions related to your service at ██████████. However, determination of any related benefits is within the cognizance of the

VA and beyond the scope of the Board's authority. Please contact the VA for questions relating to your veterans' benefits.

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 is attached 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,

8/29/2023

