



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. 3813-23
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 6 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 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 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 18 September 2023. Although you were afforded and opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the U.S. Marine Corps and began a period of active service on 4 May 1989. From 17 July 1990 to 19 July 1991, you were counseled numerous times for infractions ranging from your tardiness and irresponsibility to your disrespect toward seniors and belligerent attitude. On 19 May 1992, you received your first nonjudicial punishment (NJP) for failing to check-in from a 96-hour liberty pass and for failing to obey an order. You were awarded reduction in rank (RIR) to E-2, which was suspended for six months, forfeiture of \$100.00 pay

per month for two months, and extra duty for 45 days. From 17 August 1992 to 28 March 1992, you participated in Operation Desert Shield/Desert Storm and “Teamwork 92.” On 9 June 1992, you received a second NJP for driving under the influence. As a result of your continued misconduct your suspended RIR was vacated. On 25 September 1992 and 19 March 1993, you received additional NJPs for periods of unauthorized absences (UAs). You were subsequently notified of your pending administrative processing by reason of misconduct due to minor disciplinary infractions, at which time you elected your right to consult with counsel and waived your right to have your case heard before an administrative discharge board. On 11 June 1993, you were discharged with a General (Under Honorable Conditions) (GEN) characterization of service due to your minor disciplinary infractions.

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 to upgrade your characterization of service and to change your narrative reason for separation to “Secretarial Authority.” You contend your infractions were the result of your then undiagnosed PTSD and that: (1) you served in operations Desert Shield, Desert Storm and NATO (North Atlantic Treaty Organization) exercise ‘Teamwork 92’ from 17 August 1990 to 28 March 1991, (2) while stationed on the USS Nassau you witnessed the death of your commanding officer (CO), whom you held in high regard not solely due to his position but because you both shared the difficulties of being men of color and the targets of racism in your lives and in your service, (3) prior to experiencing the loss of your (CO) you had a positive military career and, aside from one incident of tardiness in 1990, all of your infractions followed your deployment and the death of your CO, and (4) you did not discover your discharge was unjust until years after you began treatment for PTSD and learned how it affected your service. For purposes of clemency and equity consideration, the Board noted you provided a memorandum in support of your petition, official military personnel file documents, Department of Veterans Affairs (VA) documents, and a PTSD questionnaire.

Based on your assertions that you incurred PTSD during military service, which might have mitigated the circumstances of your separation, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated 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, the VA has granted service connection for PTSD that is temporally remote to his military service. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, given pre-service and pre-deployment behavior that appears to have continued following his deployment and traumatic event. Additional records (e.g., post-service 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 conclude, “it is my clinical opinion there is post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found your conduct showed a complete disregard for military authority and regulations. The Board also noted character of service is based, in part, on conduct and proficiency averages, which are computed from marks assigned during periodic evaluations. Your conduct average was 3.9. An average of 4.0 was required at the time of your separation for a fully Honorable characterization of service. Additionally, the Board agreed with the AO that there is insufficient evidence to attribute your misconduct to PTSD. As explained in the AO, available records are not sufficiently detailed to provide a nexus with your misconduct and your pre-service and pre-deployment behavior appears to have continued following your deployment and traumatic event. As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN characterization of service. While the Board carefully considered the evidence you submitted in mitigation, 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 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,

11/21/2023

