



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. 3950-23
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 limitations 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 24 January 2024. 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)/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 an advisory opinion (AO) from a qualified mental health professional, dated 20 November 2023. Although you were provided an opportunity to comment on the AO, you chose not to do so.

You entered active duty with the Marine Corps on 22 September 1988. On 25 October 1990, you were formerly counseled on your inability to maintain funds in your account to cover written checks. On 3 December 1990, you received non-judicial punishment (NJP) for failure to go to at time prescribed to appointed place of duty and writing two worthless checks. On 4 December 1999, you were formerly counseled on maintaining proper funds in your account and displaying a pattern of misconduct. On 24 June 1991, you were formerly counseled on establishing a pattern of misconduct and inability to follow orders and regulation. On

16 August 1991, you received NJP for unlawful possession of alcohol and unlawfully consuming alcohol while in the barracks. On 28 August 1991, you were formerly counseled on displaying a pattern of misconduct and your ability to function in a military environment. On 18 January 1992 and 5 May 1992, you received NJP for making a false statement to the Drug and Alcohol Center with intent to deceive and failure to go at time prescribed to appointed place of duty. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to minor disciplinary infractions. After you waived your rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge with an Other Than Honorable (OTH) characterization of service. The separation authority (SA) approved the recommendation and directed an OTH discharge by reason misconduct due to minor disciplinary infraction. On 11 August 1992, 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 to upgrade your discharge and contentions that you incurred mental health concerns (PTSD) during military service that was never diagnosed and you would like to receive Department of Veterans Affairs benefits. For purposes of clemency and equity consideration, the Board noted you provided certificates describing post-service accomplishments and advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 20 November 2023. The mental health professional 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. He did not submit any medical evidence in support of his claim. 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 AO 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. Specifically, the Board determined your misconduct, as evidenced by your NJPs, outweighed the potential mitigating factors. In making this finding, the Board considered the likely seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board also considered the likely negative impact your conduct had on the good order and discipline of your command. Further, the Board concurred with AO that there is insufficient evidence to attribute PTSD/MHC to your military

service or misconduct. As explained in the AO, available records are not sufficiently detailed to establish clinical symptoms of a mental health condition in service and your statement is not sufficiently detailed to provide a nexus with your misconduct while on active duty. Further, 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. Finally, the Board considered that you were warned repeatedly about the consequences of your conduct and you chose to continue 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 and commends you for 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,

2/5/2024

