



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. 4432-23
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 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 reconsideration application on 12 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) (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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider and your response to the AO.

You enlisted in the U.S. Marine Corps and began a period of active duty service on 27 August 2001. Your pre-enlistment physical examination, on 15 December 2000, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms.

On 6 December 2002, your command issued you a "Page 11" retention warning (Page 11)

documenting a recent absence from your appointed place of duty. The Page 11 expressly warned you that another failure to be at an appointed place of duty could result in further administrative action of non-judicial punishment (NJP). On 10 January 2003, you received NJP for an unauthorized absence (UA) lasting two days. You did not appeal your NJP.

Between 22 January 2003 and 4 September 2003, you deployed to Kuwait and Iraq in support of Operations Enduring Freedom and Iraqi Freedom. During your deployment, you received NJP, on 3 August 2003, for failing to obey a lawful order. You did not appeal your NJP.

On 13 November 2003, your command issued you a Page 11 documenting your receipt of an on-base speeding ticket. You did not submit a Page 11 rebuttal statement. On 26 November 2003, your commenced a period of UA. On 26 December 2003, your command declared you to be a deserter. Your UA terminated after 447 days, on 15 February 2005, with your arrest by civilian authorities in ██████████.

On 31 March 2005, pursuant to your guilty plea you were convicted at a Special Court-Martial (SPCM) for your 447-day UA. You were sentenced to confinement for sixty days, a reduction in rank to the lowest enlisted paygrade (E-1), and a discharge from the Marine Corps with a Bad Conduct Discharge (BCD). On 18 August 2005, the Convening Authority approved the SPCM sentence as adjudged. Upon the completion of appellate review in your SPCM case, on 2 October 2007, you were discharged from the Marine Corps with a BCD and assigned an RE-4 reentry code.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Hagel, Kurta, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and change your narrative reason for separation along with your separation code. You contend that: (a) the prior Board decision failed to consider supplemental personal statement in response to AO, and this is now provided as evidence, (b) your mental health was a contributing factor to the behavior that led to your discharge from the Marine Corps, (c) the evidence of the your mental health conditions contributed significantly to the argument that correction of your discharge is warranted for reasons of clemency, especially considering the increased awareness of mental health conditions and how they impact service members, (d) your undiagnosed mental health conditions led to your inability to conform to military life as young Marine, and which ultimately led to your discharge from the Corps, (e) while you do not minimize or excuse your actions, it is important to consider the mitigating factors of your age, level of maturity, mental health illness, and how the military recognizes and treats individuals with mental health issues today as opposed to 2007, (f) in spite of your mental health conditions, your misconduct did not involve any violence toward others, and did not involve use of illegal drugs, alcohol or other illegal substances, (g) the length of time since the your misconduct and your acceptance of responsibility indicate that relief is in the interest of clemency, (h) your post-service conduct, evidence of rehabilitation, and character references indicate that the requested relief is warranted in the interest of clemency, (i) since your discharge you have been diagnosed with PTSD,

unspecified, and Anxiety, unspecified, that were related to your combat experiences in Iraq and Kuwait, (j) numerous factors outlined in the Wilkie Memo support the argument that you should be offered a second chance, and your mental health conditions present a significant mitigating fact, (k) you have since paid for your misdeeds through the termination of your military career and through serving a period of confinement, and (l) you have accepted responsibility, rehabilitated the issue causing the misconduct, and built a positive life post-discharge. For purposes of clemency and equity consideration, the Board considered the entirety of the evidence you provided in support of your application, to include your AO rebuttal submission for your previous petition.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 20 November 2023. The Ph.D. 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, he has submitted evidence of a single visit to a Veterans Center in which he received a diagnosis of PTSD that was attributed to military service and other traumatic experiences.

Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly he had UA prior to his combat deployment and PTSD avoidance does not account for his substantial UA following his return from deployment.

It is difficult to attribute his driving and disobedience to PTSD or another mental health concern. 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 Ph.D. concluded, "it is my clinical opinion there is some post-service evidence from a Vet Center of a diagnosis of PTSD that may be attributed to military service in part. 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. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions

mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your 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 not be held accountable for your actions.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 3.7 in conduct. Marine Corps regulations in place at the time of your discharge recommended a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your cumulative misconduct.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this was not a case warranting any clemency as you were properly convicted at a SPCM of serious misconduct. The simple fact remained is that you left the Navy while you were still contractually obligated to serve and you went into a UA status on no less than two separate times without any legal justification or excuse for a staggering total of approximately 449 days. As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct and disregard for good order and discipline clearly merited your discharge.

Therefore, 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 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,

1/22/2024

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Executive Director

Signed by: █