



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. 4596-23
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 your application was not filed 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 5 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 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. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the Marine Corps and commenced active duty on 13 September 1994. On 14 July 1995, you received non-judicial punishment (NJP), for violation of a written order. After a period of continuous Honorable service, you reenlisted on 4 November 1997 and commenced a second period of active duty.

On 18 March 1999, you were convicted by the State of █ of indecent exposure. Subsequently, on 17 June 1999, you received administrative remarks counseling concerning

deficiencies in your performance and/or conduct related to this incident and your prior NJP. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. However, on 2 November 1999, you were arrested for Driving Whilst Intoxicated (DWI), with a blood alcohol content of .11. Lastly, on 9 December 1999, you received NJP for unauthorized absence (UA).

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated on 2 November 2001 with an “Under Other Than Honorable Conditions (OTH)” characterization of service, your narrative reason for separation is “Misconduct,” your reentry code is “RE-4,” and your separation code is “GKQ1,” which corresponds to misconduct – commission of a serious offense - all other (board).

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 change your discharge characterization of service and your contention that your discharge was based on disciplinary issues related to mental health issues. For purposes of clemency and equity consideration, the Board considered the certificates of achievement you provided.

As part of the Board’s review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 30 October 2023. The AO noted in pertinent part:

There is no evidence in available service records 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. He has provided no medical evidence to support 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., in-service or 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 concluded, “it is my clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition.”

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by a civil conviction and NJP in your second enlistment, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and public nature of your civil conviction, which not only brought discredit on you, but on the Marine Corps. The Board also considered the likely negative impact your misconduct had on the good order and

discipline of your command. Finally, the Board noted you were given the opportunity to address your conduct issues but continued to commit misconduct, which ultimately led to your OTH. Additionally, the Board concurred with the AO and determined that there is insufficient evidence of a diagnosis of a mental health condition in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. The Board agreed that you provided no medical evidence to support your claims. 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 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.

In reviewing your record, the Board believes that you may be eligible for veterans' benefits which accrued during your prior period of Honorable service. However, your eligibility is a matter under the cognizance of the Department of Veterans Affairs (VA). In this regard, you should contact the nearest VA office concerning your rights, specifically, whether or not you are eligible for benefits based on your prior periods of Honorable service.

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, _____

1/16/2024

