



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. 4739-23

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 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 26 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 11 July 1989. On your enlistment application, you acknowledged pre-service marijuana use and an arrest for

shoplifting. In the two years following your enlistment, you were formally counseled on numerous occasions for your lack of initiative, lack of responsibility, writing bad checks, financial irresponsibility, being late to work, questionable integrity, and inability to follow orders.

From 13 January 1991 to 8 April 1991, you deployed to █ in support of Operation Desert Shield/Desert Storm as a Unit Diary Clerk (MOS 0131). For this service, you earned the Southwest Asia Service Medal and the Kuwait Liberation Medal.

On 19 November 1992, you were found guilty at Special Court-Martial (SPCM) of violating Uniform Code of Military Justice (UCMJ) Article 121, for larceny in the amount of approximately \$900. Specifically, you failed to return a pair of diamond earrings that were accidentally left at your house by a friend. You were awarded a Bad Conduct Discharge (BCD), reduction to E-1, forfeitures of pay, and 10 days confinement. However, you had entered a pre-trial agreement (PTA) that protected you from the BCD. On 5 April 1993, you were arrested by civilian authorities and later convicted of stealing a friend's bankcard and withdrawing \$400.

On 6 April 1993, you presented to the Emergency Room complaining of suicidal ideation. The psychiatric note indicates that you were admitted for suicidal ideation as a result of your pending legal problems, your wife being pregnant, and your financial debt. You were diagnosed with an Adjustment Disorder with Depressed Mood and Antisocial Personality Disorder. It was also noted that, "[h]istory reveals longstanding pattern of antisocial personality disorder," and administrative separation was recommended.

On 14 April 1993, you were notified that you were being processed for an administrative discharge by reason of misconduct due to commission of a serious offense and conviction by civilian authorities. You waived your right to consult with qualified counsel and your right to present your case at an administrative separation board. On 4 June 1993, you were discharged from the Marine Corps due to your misconduct with an Other than Honorable (OTH) characterization of service and assigned an RE- 4 reentry code.

The Board carefully considered all potentially mitigating and/or extenuating 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: (a) your desire to upgrade your characterization of service, change your narrative reason for separation and separation code, and change your reentry code, (b) your contention that you were struggling with undiagnosed mental health issues, and (c) the impact of your mental health concerns on your conduct. For purposes of clemency and equity consideration, the Board noted that you provided documentation related to your post-service accomplishments.

In your petition, you contend that you were suffering from undiagnosed PTSD after your deployment to █ in support of Operation Desert Shield/Desert Storm, which might have mitigated your discharge character of service. You claim that you were never properly treated for your post-deployment stress and that your command separated you instead of offering mental health support. 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 4 December 2023. The AO noted in pertinent part:

The Petitioner submitted post-service accomplishments. There is no evidence that the Petitioner was diagnosed with a mental health condition (other than Adjustment Disorder and Antisocial Personality Disorder) 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. Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated during an inpatient hospitalization. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose to the mental health clinician, and the psychological evaluation performed by the mental health clinician. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service, since they are not typically amenable to treatment within the operational requirements of military service. Furthermore, the nature of his misconduct is much more congruent with a personality disorder rather than PTSD. 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SPCM and civilian conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact that it involved multiple instances of theft. Further, the Board considered the negative impact your conduct had on the good order and discipline of your command. The Board determined that such misconduct is contrary to Marine Corps values and policy, renders such Marine unfit for duty, and places an unnecessary burden on fellow service members. The Board felt that you received advice from qualified counsel throughout your court martial and that you were aware of your rights. The Board highlighted that you entered a PTA as part of your SPCM, which allowed you to avoid the court ordered punitive discharge. The Board felt that the convening authority already granted you clemency by accepting your PTA. However, within months of your SPCM conviction, you committed the same type of misconduct, resulting in a civilian conviction.

In making this determination, the Board concurred with the AO that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. Your diagnosed Adjustment Disorder and Antisocial Personality Disorder are personality disorders that are pre-existing to military service by definition, and

indicate lifelong characterological traits unsuitable for military service. In regards to your claims of PTSD, the Board noted that you did not submit any clinical documentation or treatment records to support your mental health claims despite a request from BCNR on 8 June 2023. Further, you never raised any mental health concerns during your numerous disciplinary proceedings, which would have triggered a mental health referral and assessment prior to your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related symptoms. The Board determined the record clearly reflected that your active duty 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 otherwise not be held accountable for your actions. The Board concluded that your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. 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,

2/2/2024

