



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

█
Docket No. 4810-23

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 17 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 24 November 2023. Although you were provided an opportunity to comment on the AO, you chose not to do so.

You enlisted in the Marine Corps Reserve and commenced a period of active duty for training on 25 January 1999. After completing your initial training, you were released to your Reserve unit. Between 11 November 2000 and 5 January 2003, you accumulated 17 unexcused absence from scheduled drills. Subsequently, you requested to be discharged by reason of not being found physically qualified. On 24 September 2003, your commanding officer (CO) was directed by Commander, Marine Forces Reserve to initiate discharge processing due to you not being physically qualified with an Honorable discharge and a JFR3 designator code; which is consistent with a discharge for condition not considered a disability.

Unfortunately, some of the documents pertinent to your 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. Administrative Remarks in your OMPF, reveals that you were separated from the Marine Corps Reserve on 4 February 2004. Your record does not indicate you were assigned an Other Than Honorable (OTH) characterization of service.

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 a mental health condition (MHC) during military service, which contributed to your misconduct due to suffering from depression and you were under doctor's care for many issues related to mental and physical health when discharged. For purposes of clemency and equity consideration, the Board noted you provided Medical Records from the Hutchinson Clinic.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 24 November 2023. The mental health professional stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition while in active 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. The evidence he has provided is of sleep difficulties associated with a medical condition. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms of a mental health condition during military service or provide a nexus with his failure to drill or provide updated contact information. 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 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 these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board found no basis to change your record since there is no evidence you were issued an OTH. Contrary to your assertion, the Board found documentation in your record where your command was directed to issue you an Honorable discharge based on your failure to meet physical qualifications. Therefore, while the Board carefully considered the evidence you provided 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. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Should you have additional evidence that documents you received an OTH discharge for your failure to participate, the Board will reconsider your application. Otherwise, the Board recommends you contact Headquarters, U.S. Marine Corps (HQMC) MMRP-13 to issue you a new discharge document. You may reach them at ██████████ or email:
██████████

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,

2/1/2024

