



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. 5191-23

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 22 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, 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on December 1, 2023. Although you were afforded an opportunity to submit a 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.

During your enlistment processing you disclosed pre-service marijuana use and were granted an enlistment waiver. You enlisted in the U.S. Marine Corps and completed a period of Honorable service on 4 May 1996. You reenlisted and commenced a second period of service on 6 January

1996. On 3 January 2002, you were involved in a domestic violence incident and awarded nonjudicial punishment (NJP) on 23 May 2002, for assaulting your wife and for an unrelated dereliction of duty offense. You were subsequently notified of your pending administrative separation processing for commission of a serious offense (COSO), at which time you elected your rights to consult with counsel and have your case heard before an administrative discharge board (ADB). An ADB was held on 16 July 2002, and unanimously found you committed misconduct and recommended you be discharged with a General (Under Honorable Conditions) (GEN) characterization of service. On 13 August 2002, 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 your contentions that: (1) you incurred PTSD and suffered a TBI during military service, (2) you lost several crew members, (3) you were deployed multiple times, (4) you were experiencing marital issues and there was no help offered for this at the time as Marines were taught to “not bring work home or home to work,” (5) there were few resources available for PTSD [sufferers], (6) you are listed at 100% disabled and 70% of your disability is PTSD/TBI, (7) the TBI occurred during a training exercise but you were back out a few days later with headaches, nausea, and other illnesses but were told to get back to work by your commanding officer, and (8) medical evidence has shown that PTSD coupled with TBI leads to depression and other mental health illnesses. For purposes of clemency and equity consideration, you provided Department of Veterans Affairs (DVA) documents.

Based on your assertions that you incurred PTSD, TBI, and other mental health concerns during military service, which might have mitigated the circumstances of your separation, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a TBI or a mental health condition in military service. Post-service, the VA has granted service connection for PTSD. While there is some evidence of a possible head injury during service, there is insufficient evidence of ongoing treatment of residual TBI symptoms. Chronic headaches have been deemed to be unrelated to his service head injury. Unfortunately, available records are insufficiently detailed regarding his PTSD symptoms to establish a nexus with his misconduct. In particular, it is difficult to attribute deceptive communication and failure to prepare himself and others for inspection to PTSD. There is insufficient information regarding his traumatic precipitant to attribute UA or domestic violence to PTSD symptoms. 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 post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD, TBI, or another mental health condition.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Additionally, the Board agreed with the AO that there is insufficient evidence to attribute your misconduct to PTSD, TBI, or another mental health condition. As explained in the AO, it is difficult to attribute deceptive communication and failure to prepare yourself and others for inspection to PTSD. Additionally, there is insufficient information regarding your traumatic precipitant to attribute UA or domestic violence to PTSD symptoms. As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN. 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.

Finally, you previously filed an application for relief with the Naval Discharge Review Board (NDRB) seeking to have your discharge upgraded. On 12 March 2004, the NDRB denied your requested relief but identified administrative errors in your Certificate of Discharge or Release from Active Duty (DD Form 214) relating to certain dates and recommended that your DD Form 214 be corrected. In reviewing your record, this Board observed that those changes do not appear to have been made. Thus, the Board recommends that you contact the Marine Corps at Commandant of the Marine Corps (CMC) (Code MMRP), Headquarters, United States Marine Corps, █ to request the administrative errors identified by the NRDB be corrected.

You are entitled to have the Board reconsider its decision upon the 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 is attached 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

