



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. 6123-23
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 12 February 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. 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 28 Jul 2003. On 10 May, you were issued an administrative remarks (Page 11) counseling concerning deficiencies in your performance and/or conduct, specifically disrespect to a non-commissioned officer. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

On 10 August 2005, you received non-judicial punishment (NJP) for two specifications of failure to obey a lawful order. The portion of your award ordering reduction-in-rank was suspended for six months, provided you did not commit further misconduct. In addition, you received Page 11

counseling for those offenses. Further, that same day you received Page 11 counseling for unauthorized absence (UA), malingering, and forgery for falsifying a sick-in-quarters (SIQ) chit to recover from a surgery you claimed to have had, but did not.

On 24 August 2005, you were questioned by military authorities on suspicion of larceny, making false official statements, and fraud pertaining to your theft of your roommate's compact discs. During the questioning, you lied to investigators by denying you ever having the CDs, but then admitted to taking the CDs, distributing them to your friends, and having no intention of returning them. On 25 August 2005, the suspension of your awarded punishment from your 10 August 2005 NJP was vacated and you were reduced in rank to E-2.

On 1 September 2005, you received NJP for three specifications of UA and failure to obey a lawful order. On 2 November 2005, you received NJP for UA, violating a military protective order, and malingering. Consequently, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to pattern of misconduct and commission of a serious offense. You waived your rights to consult counsel, submit a statement, or have your case heard by an administrative discharge board. The Separation Authority subsequently directed your discharge with an OTH characterization of service and you were so discharged on 25 January 2006.

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 contentions that you suffered from major depressive disorder and PTSD during your time in service and that you would like to receive Department of Veterans Affairs (VA) benefits. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application but noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

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 26 December 2023. The AO stated in pertinent part:

The Petitioner provided November 2022 evidence of service connection for treatment purposes for Major Depressive Disorder, Moderate (claimed as PTSD and anxiety).

There is no evidence that he was diagnosed with a mental health condition during military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Post-service, the VA has granted service connection for a mental health condition. Unfortunately, available records are not sufficiently detailed to provide a nexus with his misconduct, particularly as much of his misconduct (such as lying, larceny, and malingering) is inconsistent with a mental health condition like depression. 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 diagnosis of PTSD that may be attributed to military service. There is post-service evidence from the VA of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another 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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your repeated misconduct had on the good order and discipline of your command. The Board noted that you were given multiple opportunities to address your conduct issues, but you continued to commit misconduct, which ultimately led to your administrative discharge for misconduct due to a pattern of misconduct. Additionally, the Board concurred with the AO and determined there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service and, while there is post-service evidence from the VA of a mental health condition that may be attributed to military service, there is insufficient evidence to attribute your misconduct, particularly the lying, larceny, and malingering, to PTSD or another mental health condition. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans’ benefits, or enhancing educational or employment opportunities.

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.

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,

2/28/2024

