



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. 100-24
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 your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board, sitting in executive session, considered your reconsideration application on 19 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 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider for your previous petition and your response to the AO.

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 U.S. Marine Corps and began a period of active duty service on 21 May 1986. Your pre-enlistment physical examination, on 15 May 1986, and self-reported medical history both noted no psychiatric or neurologic conditions, symptoms, or treatment/counseling history. You admitted pre-service marijuana use, and disclosed pre-service arrests for driving while intoxicated (DWI) and underage drinking.

On 27 June 1987, your command issued you a "Page 11" counseling warning (Page 11) for possessing an illegal weapon (butterfly knife). The Page 11 expressly advised you that a failure to take corrective action may result in administrative separation or judicial proceedings. You did not submit a Page 11 rebuttal statement.

On 12 November 1987, your command issued you a Page 11 for possessing alcohol in the barracks. The Page 11 expressly advised you that a failure to take corrective action may result in administrative separation or judicial proceedings. You did not submit a Page 11 rebuttal statement.

On 11 December 1987, you received non-judicial punishment (NJP) for two separate specifications of unauthorized absence (UA). You did not appeal your NJP. On 13 January 1988, you received NJP for UA that lasted eleven (11) days. You did not appeal your NJP.

On 22 February 1988, you received NJP for failing to obey a lawful order for driving on base with a suspended license. You did not appeal your NJP. On 26 February 1988, your command issued you a Page 11 documenting your failure to abide by base driving regulations, alcohol abuse, and repeated UA offenses. The Page 11 expressly advised you that any further disciplinary infractions or continuation of deficient performance may result in disciplinary action and/or processing for administrative discharge. You did not submit a Page 11 rebuttal statement.

On or about 23 April 1988, you commenced inpatient Level III alcohol rehabilitation treatment at Naval Hospital █. On or about 22 June 1988, you were discharged from the hospital upon completion of your treatment regimen. On 26 June 1988, you suffered severe injuries off-duty when you fell approximately thirty feet onto some rocks while climbing a cliff. On 5 July 1988, you were discharged from the hospital.

On 26 September 1988, you commenced a UA that terminated after twenty-six (26) days on 22 October 1988. You received NJP in November 1988 for your long-term UA. The reason you provided to your chain of command for your UA involved a purported domestic incident between your girlfriend and her ex-boyfriend. When your chain of command inquired as to why you took so long, you stated words to the effect that if you stayed away long enough your command would recommend you for a discharge.

On 13 January 1989, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to a pattern of misconduct. You waived your right to consult with counsel, to submit written rebuttal statements, and to request a hearing before an administrative separation board. In the interim, your separation physical examination, on 22 February 1989, found you physically qualified for separation and did not note any psychiatric or neurologic issues. You expressly stated on your self-reported medical history: "I am in good health and not presently taking any medications." Ultimately, on 22 February 1989, you were discharged from the Marine Corps for a pattern of misconduct with an under Other Than Honorable conditions (OTH) characterization of service and assigned an RE-4 reentry code.

In May 1991, the Naval Discharge Review Board denied your initial application for a discharge upgrade. In December 2022, this Board denied your discharge upgrade petition in its entirety.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case. These included, but were not limited to, your desire for a discharge upgrade and contentions that: (a) your pattern of misconduct was a result of an alcohol use disorder which is a DSM-5 identified disorder, (b) you have been sober for over twenty years, (c) you were told you would have Department of Veterans Affairs (VA) access to health care, and you would have fought your discharge had you known you would not have access to VA health care, (d) you are now 56 and suffer from PTSD, depression, anxiety, nightmares, and flashbacks, and (e) had you not been an alcoholic and been able to receive proper physical therapy to heal properly, there was no doubt you would have retired as a U.S. Marine with an honorable discharge. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 9 November 2022. The Ph.D. stated in pertinent part:

Petitioner was appropriately referred and properly treated for an alcohol use disorder during military service. Problematic alcohol use is incompatible with military readiness and discipline and there is no evidence he was unaware of his misconduct or not responsible for his actions. The evidence indicates that problematic alcohol use begun prior to entry into military service continued during military service, before and after his back injury. There is no evidence of another mental health condition. Available records are insufficiently detailed to establish clinical symptoms of another mental health condition during military service or a nexus with his misconduct, particularly given his statements in service regarding his UA. 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 Ph.D. 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 his misconduct could be attributed to a mental health condition."

In response to the AO, you provided medical documentation with your current application.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that characterization under OTH conditions is generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. The Board also

concluded there was no nexus between any purported mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

The Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 3.6 in conduct. Marine Corps regulations in place at the time of your discharge recommended a minimum trait average of 4.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your cumulative misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your serious misconduct and further justified your OTH characterization.

The Board considered the medical evidence you provided but was not persuaded. The Board also noted that administrative separations for misconduct take absolute precedence over medical-related discharges. Even if you were currently undergoing the appropriate medical board/physical evaluation board evaluations at the time, an administrative separation for misconduct would govern your ultimate separation.

Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. As a result, the Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, 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,

1/30/2024

[REDACTED]

Executive Director

Signed by: [REDACTED]