



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

■
Docket No. 5935-23
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 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 service 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. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You previously submitted a petition to the Naval Discharge Review Board and were denied relief on 20 May 1980. You also applied to the Board for Correction of Naval Records and were denied relief on 25 July 1984.

You enlisted in the United States Marine Corps and commenced a period of service on 12 August 1974. On 17 October 1975, you self-referred for medical evaluation due to "behavior problems" after being involved in two auto accidents and feeling "as if [you were] 'slipping into

old ways.” There was no evidence of psychosis or neurosis found, and a “situational reaction” was noted.

On 25 November 1975, you received non-judicial punishment (NJP) for violation of Uniform Code of Military Justice (UCMJ) Article 86, for failure to go to your appointed place of duty. On 9 February 1976, you received your second NJP for violating UCMJ Article 86, for two days of unauthorized absence (UA). You were formally counseled due to this misconduct and notified that further misconduct could result in administrative or judicial processing. On 26 March 1976, you received your third NJP for violating UCMJ Article 86, for a 30-day period of UA. On 20 January 1977, you received your fourth NJP for violating UCMJ Article 86, for a 10-day period of UA. On 28 January 1977, you received your fifth NJP for violating UCMJ Article 134, for breaking restriction. On 6 April 1977, you received your sixth NJP for violating UCMJ Article 86, for failing to go to your appointed place of duty and for a 25-day period of UA. You did not appeal any of these NJPs.

On 14 June 1977, you were found guilty at Special Court Martial (SPCM) of violating UCMJ Article 86, for a 12-day period of UA and a 28-day period of UA. You were sentenced to three months of confinement and forfeitures of pay. Prior to your SPCM, you received a mental health assessment wherein no psychiatric diagnosis was identified and you were deemed psychiatrically fit for full duty. The record noted, “[t]his man does not have an aggressive uncontrolled personality. He merely acts as he feels. He can adapt to the service but, chooses not to.... He is responsible for his actions and should be judged accordingly.” You had previously began taking Antabuse for your alcohol addiction.

On 30 August 1977, you were notified that you were being processed for an administrative discharge by reason of misconduct due to frequent involvement with military authorities. After consulting with qualified counsel, you decided to waive your right to present your case at an administrative separation board. On 27 September 1977, you were discharged from the Marine Corps 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 and change your narrative reason for separation, (b) your age and maturity level at the time of service, (c) your assertion that you were struggling with undiagnosed mental health conditions during your service, (d) the impact that your mental health had on your conduct, (e) the non-violent nature of your misconduct, and (f) the advanced understanding and mental health treatment options today vice during your time in service. For purposes of clemency and equity consideration, the Board noted you provided evidence of your post-service accomplishments and character letters.

In your request for relief, you contend that you were suffering from undiagnosed mental health concerns during service, stemming from childhood trauma, which contributed to your

misconduct. In support of your request, you provided a January 2022 letter from a civilian psychologist acknowledging treatment from January 2019 to June 2019 for Major Depressive Disorder, Recurrent, Moderate; Adjustment Disorder with Mixed Anxiety and Depressed Mood; Other Specified Attention-Deficit/Hyperactivity Disorder; and Alcohol Use Disorder, Moderate. You also submitted an undated letter from a second civilian psychologist, listing treatment from 2003 to 2005 and 2008 to 2009 for diagnoses of Major Depressive Disorder, Severe, Without Psychotic Features; Borderline Personality Disorder; Generalized Anxiety Disorder; and “Developmental Trauma or Complex Post-Traumatic Disorder (currently not in the Diagnostic and Statistical Manual of Mental Health Disorders).” The psychologist opined that the Petitioner “enlisted with the Marines with significant and undiagnosed mental health issues...long before trauma treatment was recognized and available, [so] his behavioral issues were not understood or addressed.”

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 26 December 2023. The Ph.D. noted in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. During military service, the Petitioner was evaluated on two occasions and deemed psychologically fit for full duty. Post-service, two civilian psychologists have diagnosed him with PTSD and other mental health concerns that are temporally remote to his military service and attributed to childhood traumatic precipitants. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, given his in-service medical records. Additional records (e.g., complete 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 Ph.D. concluded, “it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is post-service evidence from civilian psychologists of diagnoses of PTSD and other mental health conditions that may have been experienced during military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition.”

After thorough review, the Board concluded the potentially mitigating factors were insufficient to warrant relief. In accordance with the Kurta, Hagel, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about undiagnosed mental health issues and the possible adverse impact on your service. Specifically, the Board felt that your misconduct, as evidenced by your NJPs and SPCM conviction, outweighed these mitigating factors. The Board considered the seriousness of your repeated misconduct and the likely negative impact that 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, and places an unnecessary burden on fellow shipmates. The Board felt that your chain of command gave you plenty of opportunities to change your behavior but you chose to continue to commit misconduct.

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. The Board noted that you did not report that you were suffering from any mental or physical conditions that would have triggered referral for treatment. The Board agreed with the AO that your post-service diagnosis is temporally remote to your service, and fails to draw a sufficient nexus to your underlying misconduct.

As a result, the Board concluded that your misconduct was not due to mental health-related symptoms. The Board found 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 characterization and a “misconduct” basis for separation.

While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge good character, 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,

2/26/2024

