



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. 6112-23
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 enlisted in the United States Marine Corps and commenced a period of service on 1 September 1976. On 31 March 1977, you began a period of unauthorized absence (UA) from your unit and did not return to military control until 30 April 1977. You were referred to mental health by your command due to your "marginal performance and poor attitude" and were evaluated by a mental health professional, who noted your immature personality. During your evaluation, you expressed your intent to keep going UA until you were discharged, specifically stating "I don't care what kind of discharge I get, just so long as I get out." On 23 May 1977, you received non-judicial punishment (NJP) for violating Uniform Code of Military Justice (UCMJ) Article 86, for the above noted 30-day period of UA. You did not appeal this NJP. In the

following months, you were formally counseled on two occasions regarding his conduct on liberty and the fact that you were not recommended for promotion due to poor performance.

On 8 January 1979, you began another period of UA from your unit, not returning to military control until 12 March 1979. You were admitted for a 26-day psychiatric hospitalization upon your return from UA, after stating that you would “kill someone or yourself” if you had to return to your duty station. On 11 April 1979, a Medical Board reviewed your case and recommended discharge from the service with a primary diagnosis of “hysterical personality, chronic, moderate, unchanged, existing prior to enlistment (Personality Disorder).” The Medical Board found you unsuitable for further military service and determined that treatment in a military facility would not restore you to active duty status. You were notified of the Medical Board’s recommendation and elected not to make a statement or contest the Board’s findings. Prior to your separation, you were given a physical examination wherein you deny any mental health symptoms or concerns, aside from your diagnosed Personality Disorder. On 10 May 1979, you were discharged from the Marine Corps with a General (Under Honorable Conditions) (GEN) 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, (b) your contention that you were suffering from undiagnosed mental health issues during service, and (c) the impact that your mental health had on your conduct. For purposes of clemency and equity consideration, the Board noted that you did not provide documentation related to your post-service accomplishments or character letters.

In your request for relief, you contend that you suffered from undiagnosed PTSD and other mental health conditions during service, to include severe anxiety and suicidal thoughts. 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 28 December 2023. The Ph.D. noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated during an inpatient hospitalization. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. A personality disorder diagnosis is pre-existing to military service and indicates lifelong characterological traits unsuitable for military service. Unfortunately, he has provided no medical evidence to support his claims. His in-service misconduct appears consistent with his diagnosed personality disorder, rather than evidence of PTSD or another mental health condition. 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 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 insufficient evidence to attribute his misconduct to PTSD or another mental health condition, other than personality disorder.”

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 NJP and periods of UA, outweighed these mitigating factors. The Board considered the seriousness of your misconduct and the fact that it involved extended and repeated periods of UA. Further, the Board also considered the likely negative impact 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 placed an undue burden on fellow service members.

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. Your in-service misconduct appears to be consistent with your diagnosed personality disorder, rather than evidence of another mental health condition incurred in or exacerbated by military service. By definition, personality disorders are characterological and are pre-existing to military service. Further, you did not provide any post-service medical documents in support of your contention about a mental health diagnosis and your personal statement fails to draw sufficient nexus to the underlying misconduct. As a result, the Board concluded that your misconduct was not due to mental health-related symptoms. The Board determined that the record clearly reflected 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. You were notified of the Medical Board’s recommendation that you be separated from the Marine Corps and chose not to make a statement in response. The Board determined that a GEN characterization is appropriate when significant negative aspects of a Marine's conduct outweighs the positive aspects, which remains accurate in your case.

Therefore, 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.

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

