



**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. 6292-23  
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.

A three-member panel of the Board, sitting in executive session, considered your application on 18 April 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness regarding requests by Veterans for modification of their discharge, (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) (collectively Clarifying Guidance). The Board also considered the 22 September 2023 advisory opinion (AO) from Headquarters, Marine Corps, Disability Separation and Retirement Section (MMSR-4) and your response to the AO, along with the 29 January 2024 AO from a qualified licensed clinical psychologist. Although you were provided an opportunity to respond to the 29 January 2024 AO, 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.

A review of your record reveals that you enlisted in the Marine Corps Reserve and served an initial term of enlistment on 23 February 2004 through 23 July 2004. On 28 December 2004, you voluntarily withdrew from your officer candidate school class in order to deploy with your reserve unit to Iraq. You then served a period of active duty from 4 January 2005 to 9 November 2005, which was in support of [REDACTED]. You then served another period of active duty starting 22 January 2006, which consisted of training toward being a commissioned officer. Thereafter, you commenced a period of active service, which lasted until your final discharge on 11 August 2021.

On 3 June 2020, you received nonjudicial punishment (NJP) for several violations of the Uniform Code of Military Justice, which are set forth in your Commanding General's (CG's) 4 September 2020 report of NJP to the Commandant of the Marine Corps (CMC). A more fulsome description of the background giving rise to your NJP is set forth in other endorsements, which are described below. In his report, your CG explained that, "[t]he circumstances giving rise to the imposition of NJP in this case are: failing to obey order or regulation; false official statements to investigating officers; drug use; obstruction of justice; conduct unbecoming an officer and gentleman; and fraternization." Your CG also explained that you had screened positive for Opioid Use Disorder, had a case pending before the Physical Evaluation Board, and that you had screened positive for Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI). Your CG recommended that you not be further processed before the Physical Evaluation Board (PEB) and that you instead be administratively separated with an Other Than Honorable characterization of service.

On 20 November 2020, the next level of your chain of command, [REDACTED] [REDACTED] readdressed and forwarded the endorsement to Assistant Secretary of the Navy for Military and Reserve Affairs (ASN (M&RA)) via the CMC, explaining that clemency in the form of assigning a General (Under Honorable Conditions) characterization of service was appropriate in light of your mental and physical injuries, as follows:

[Petitioner's] involuntary separation from the Marine Corps is appropriate. However, considering the mental and physical injuries he sustained in service to his country, I recommend we provide him access to the benefits that will continue his healing process and enable him to get his life in order. A characterization of General (Under Honorable Conditions) will offer him this opportunity. By contrast, an OTH would require [Petitioner] to petition the Department of Veterans Affairs to receive any service related disability assistance, with his chances of success likely limited.

On 25 March 2021, CG [REDACTED] set forth his endorsement to the report of nonjudicial punishment to the CMC, explaining your misconduct as follows:

[Petitioner] pled guilty at nonjudicial punishment to a course of misconduct stretching from April of 2018 to February of 2019. During this time he misused his government travel charge card and withdrew funds at automated teller machines for purposes unrelated to travel. He engaged in a sexual relationship with a

sergeant, and when the relationship was discovered and investigated by the chain of command, lied to two separate investigating officers. He then had the sergeant destroy evidence of their relationship, and coached her on providing false answers to the investigating officers. Simultaneously, [Petitioner] was soliciting sex from a Chief Warrant Officer 4 in Marine Corps workspaces, requesting money from her, and wrongfully using oxycodone. The actions of [Petitioner] represent a stark departure from the high expectations placed upon Naval officers, represent significant instances of substandard performance, and identify the determinant to good order and discipline he has caused.

CG, [REDACTED] further explained that your charges that were adjudicated at NJP were initially prepared for submission to a court-martial, but you had negotiated and agreed to a pre-trial agreement by which you would plead guilty at NJP and agree to waive a hearing by a Board of Inquiry (BOI). In making his recommendation, CG, [REDACTED] explained that he specifically considered the requests made by you in your submissions and through counsel, “to be retained and be permitted to submit for Temporary Early Retirement Authority (TERA); or to be retained in order to be permitted to retire under the findings of PEB.” CG, [REDACTED] also explained that he “reviewed the appropriately privileged medical providers’ assessment of [Petitioner’s] diagnosis of Post-Traumatic Stress Disorder (PTSD) and Traumatic Brain Injury (TBI), and how those diagnosis may have contributed to his misconduct.” On those issues, CG, [REDACTED] explained that they were taken into consideration for mitigation and recommended that your discharge be characterized as General (Under Honorable Conditions) and not Other Than Honorable, as follows:

In light of [Petitioner’s] diagnoses of PTSD and TBI, his medical concerns are significant. However, the nature and quality of [Petitioner’s] misconduct is not sufficiently mitigated to warrant retention in the Marine Corps for consideration of his requests. Accordingly, I do not recommend [Petitioner’s] retention to submit for TERA, and I do not recommend he be retained to retire under the PEB. Instead, I recommend all adverse materials be placed in [Petitioner’s] official military personnel file, and that he be separated.

On 22 July 2021, the CMC transmitted his endorsement on your report of nonjudicial punishment to ASN (M&RA). This endorsement sets forth the factual background that led to your discharge, as follows, with formatting edits.

In May 2018, [Petitioner’s] command received information that he was engaging in an inappropriate relationship with a sergeant while on recruiting duty. [he] was interviewed by an investigating officer with regard to this relationship and denied anything inappropriate. The command did not find any reliable evidence and the case was closed. On 8 February 2019, the CG, [REDACTED] and [REDACTED], initiated a command investigation to inquire into the facts and circumstances surrounding allegations of: (1) improper use of his government travel charge card; (2) an inappropriate relationship with a sergeant (from 2018); (3) improper communications,

fraternization and sexual harassment of a captain; and (4) assault, harassment and an inappropriate relationship with an enlisted Marine's wife.

On 29 March 2019, the investigating officer substantiated the allegations. During the course of the investigation, the investigating officer also uncovered evidence suggesting illegal drug use. Additionally, the results of the investigation revealed that [Petitioner] reached out to many of the witnesses interviewed during the investigation in an effort to find out information about the status of the investigation and to destroy evidence of wrongdoing. The investigation further revealed that [he] lied to the investigating officer in 2018 when he denied his relationship with the sergeant.

Charges were preferred against Petitioner on 4 October 2019, for violations of Articles 92 (Failure to Obey a Lawful General Order), 107 (False Official Statement), 112a (Wrongful Use of a Controlled Substance), 131b (Obstruction of Justice), 133 (Conduct Unbecoming an Officer and a Gentleman), and 134 (Fraternization). On 7 May 2020, Petitioner's CG entered into a PTA with Petitioner wherein he would plead guilty to charges, accept NJP, and waive a BOI.

On 3 June 2020, Petitioner's CG imposed NJP and he was awarded a punitive letter of reprimand and forfeiture of half pay for two months with half of forfeiture suspended. In the meantime, further charges were preferred against Petitioner for attempted sexual assault and abusive sexual contact. These charges were ultimately dropped.

On 4 September 2020, Petitioner's CG recommended that he be separation with an OTH. On 16 September 2020, Petitioner submitted a statement wherein he outlined his combat experience, mental health issues, and opioid dependency.

On 20 November 2020, the next level in Petitioner's chain of command recommended he be discharged with a general discharge, which was endorsed by the next level in Petitioner's chain of command.

In the meantime, on 5 October 2020, Petitioner submitted matters requesting to be allowed to continue his medical board processing or, in the alternative, to be separated with an Honorable characterization of service. On 17 April 2019, Petitioner was evaluated and diagnosed with an opioid use disorder. It was recommended he complete the Intensive Outpatient Treatment Program, which he did on 28 June 2019. He was also recommended to attend aftercare, which he completed on 1 July 2020. On 20 August 2020, a medical provider evaluated him and found that he was qualified for separation. Although, he was previously diagnosed with PTSD and TBI, he was screened again on 8 July 2020, confirming the previous diagnosis. On 4 September 2020, Petitioner's CG considered this diagnosis, did not find it sufficiently mitigating, and recommended he be separated with an Other Than Honorable characterization of service.

On 20 November 2020, CG, [REDACTED] also considered this diagnosis and recommended [Petitioner] be separated with a General (Under Honorable Conditions) characterization of service. On 25 March 2021, CG, [REDACTED] concurred with this recommendation and characterization of service

After discussing your various medical and mental health conditions, as well as your status within the PEB, the CMC recommended as follows:

After reviewing the applicable law and regulations, Report of NJP, [Petitioner's] matters, and the chain of command's recommendation, I recommend [Petitioner] be separated with his service characterized as General (Under Honorable Conditions). [Petitioner's] persistent, deliberate misconduct demonstrates that he has no potential for future service and outweighs the otherwise positive aspects of his career. Therefore, separation with a General (Under Honorable Conditions) characterization of service is appropriate. The separation code will be BKM1 - Misconduct (Other). Adverse material will be included in his Official Military Personnel File.

On 4 August 2021, ASN (M&RA) issued the decision to approve the recommendation of the CMC. You were thereafter discharged, on 11 August 2021, as approved by the ASN (M&RA).

In your application, you request to be issued a TERA retirement based on a disability. In support of your request you provided a written brief, in which you stated that your "record should be corrected to reflect the recommended TDRL (TERA) retirement." The Board noted that this likely represented a misunderstanding concerning the Temporary Disabled Retired List (TDRL) and TERA, which are two different programs. In light of this apparent misunderstanding, the Board granted you the benefit of the doubt and evaluated your request to include both a request to be placed on the TDRL (or to otherwise be awarded a service disability retirement such as placement on the Permanent Disability Retired List (PDRL)), in addition to an alternative request to be awarded a TERA retirement. In your brief, but not on your DD Form 149, you also requested that your characterization of service be upgraded to Honorable. In support of your requests, you contend you were suffering from PTSD and TBI after combat tours, which manifested in risk-taking behavior.

In light of your request for a TERA retirement, the Board obtained the 22 September 2023 AO from Headquarters, Marine Corps Disability, Separation, and Retirement Section, which was considered unfavorable to your request. According to that AO:

3. As detailed in reference (b) [MARADMIN 630/22] retirement with at least 20 years of service is the basic requirement for a career in the military services. TERA is an exception and is used to retire service members who would otherwise been expected to pursue and qualify for a 20 year retirement. TERA may be used in conjunction with waiving PEB findings as long as the service member found unfit has at least 15, but fewer than 20, years of active service and is willing to waive the PEB findings.

4. The PEB is not the governing authority for approval/denial of TERA applications. It is a responsibility residing with Headquarters United States Marine Corps. [Petitioner] did meet the time in service requirement. However, . . . [Petitioner] was subject to nonjudicial punishment and was separated with a General (Under Honorable Conditions) characterization of service. Due to his separation there was no expectation of meeting the 20 year service requirement and this would have disqualified him from receiving a TERA retirement. Additionally, no request for TERA for [Petitioner] can be found in our records.

With respect to your assertions that your mental health conditions mitigated your misconduct while you were on active duty, the Board obtained the 29 January 2024 AO from a Licensed Clinical Psychologist. This AO concluded that your record demonstrates sufficient evidence of PTSD and TBI that may be attributed to military service, and that some, but not all of your misconduct could be attributed to PTSD and TBI. The Board determined that this was essentially neutral because, as described below, these mental health conditions were in fact diagnosed while you were on active duty, and they were fully considered by your chain of command, and which provided clemency to you in the form of recommending that you be discharged with a General vice Other Than Honorable characterization of service.

The Board carefully reviewed the petition and the material you provided in support of your requests and disagreed with your rationale for relief. In keeping with the letter and spirit of the Clarifying Guidance, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced, and their possible adverse impact on your service. With respect to your request to obtain a TERA retirement, the Board concurred substantially with the AO from ██████████ which opined that your misconduct discharge disqualified you from a TERA retirement. The Board considered that the essence of your argument on this issue related to your mental health conditions and their impact on your service. Despite these conditions, the Board determined that you provided insufficient evidence that justified a TERA retirement.

Similarly, based on your request that you be placed on the TDRL in connection with your TERA retirement, the Board presumed this to be an alternative request to be awarded a service disability retirement. On this point, similar to its recommendation to deny your request for a TERA retirement, the Board determined that your misconduct discharge precluded your ability to obtain a service disability retirement and that there was no error or injustice in your record denying you such. In its review of your records, and the material that you provided, as well as the AO from a Licensed Clinical Psychologist, the Board concluded that the material provided was insufficient to demonstrate that you are entitled to a medical disability retirement. In reaching this decision, the Board observed that your mental health conditions were in fact diagnosed while you were in service, they were openly discussed, and they were specifically considered and addressed in great detail. Indeed, the Board observed that each step in the review of your discharge, your chain of command through and including the CMC, specifically evaluated and addressed your mental health conditions and their impact on your service and ability to receive a service disability retirement in light of your misconduct. Thus, despite its application of special and liberal consideration, the Board determined that there was no error or injustice in the significant evaluation of you to obtain a service disability retirement while you were in service.

Next, with respect to your request for an upgrade to an Honorable characterization of service, an initial review of your application has revealed that your date of discharge is less than fifteen years old and as such; your request for an upgrade to your characterization of service should have been submitted to the Naval Discharge Review Board (NDRB) utilizing a completed DD Form 293. Each applicant before the NDRB is entitled to one Documentary Record Review and one Personal Appearance Hearing. Additional useful information may be found at <http://www.secnav.navy.mil/mra/CORB/pages/ndrb/>. Based on this finding, the Board determined you have not yet exhausted your administrative remedies with regard to this issue. Accordingly, given the totality of the circumstances, the Board determined that the entirety of 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,

5/16/2024

