



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. 6722-23
Ref: Signature Date

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Dear █

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 18 March 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, 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 the advisory opinion (AO) furnished by a qualified mental health professional, dated 6 February 2024. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

Regarding your request for a personal appearance, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) 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 Marine Corps and began a period of active duty on 17 January 1995. On 25 October 1995, you were counseled concerning underage consumption of alcohol and driving

impaired. You were advised that failure to take corrective action could result in administrative separation. On 26 October 1995, you received nonjudicial punishment (NJP) for underage consumption of alcohol and operating a vehicle while under the influence. On 31 October 1995, you were counseled concerning financial responsibility. You were advised that failure to take corrective action could result in administrative separation.

On 18 December 1995, you were diagnosed by a medical officer with alcohol abuse and personality disorder, moderate, with passive aggressive antisocial features. On 12 January 1996, you received a second NJP for stealing military property of value of about \$185.00 and making uttering checks totaling \$200.00. On 18 January 1996, you were evaluated by a medical officer and again diagnosed with a personality disorder.

On 8 March 1996, you were counseled concerning misconduct as evidence of breaking restrictions on three occasions. You were advised to follow written orders or otherwise. On 12 June 1996, you received a third NJP for four instances of UA from appointed place of duty, failure to obey a lawful order, and making a false official statement. On 14 June 1996, you were counseled concerning misconduct as evidence of UA. You were advised that failure to take corrective action could result in administrative separation.

On 11 July 1996, you received a fourth NJP for a period of UA from appointed place of duty and breaking restrictions. On 21 August 1996, you received a fifth NJP for failure to report to your prescribed place of duty and breaking restrictions. On 31 October 1996, you were convicted by special court martial (SPCM) for disobeying a lawful order, wrongful appropriation, and breaking restrictions. You were found guilty and sentenced to forfeiture of pay in the amount of \$100.00 for a period of one month and restrictions for a period of 14 days. Consequently, on 6 November 1996, you were notified of the initiation of administrative separation proceedings by reason of misconduct, at which point, you decided to waive your procedural rights. Your commanding officer recommended an Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to pattern of misconduct. On 6 December 1996, your SPCM sentence was approved and executed. On 13 December 1996, the separation authority approved and ordered an OTH discharge characterization of service by reason of misconduct due to pattern of misconduct. On 17 December 1996, you were so discharged.

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 for a discharge upgrade and contentions that: (a) you injured your back during your time in service, (b) you have gone through two back surgeries and you are currently facing a third, (c) you need to provide for your family and your insurance does not cover full medical expenses, (d) you were diagnosed with PTSD, ADHD, personality disorder and antisocial features, (e) your therapist and Department of Veterans Affairs counselor contends misconduct was attributed to your untreated mental health conditions. For purposes of clemency and equity consideration, the Board noted you submitted a character letter of support.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated by two different military mental health providers. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to, and the psychological evaluations performed. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service, since they are not typically amenable to treatment within the operational requirements of military service. Unfortunately, he has provided no medical evidence to support his claims. His in-service misconduct appears to be consistent with his diagnosed personality disorder, rather than evidence of PTSD or another mental health condition incurred in or exacerbated by military service. Furthermore, it is difficult to consider how PTSD, or another mental health condition would account for his misconduct, particularly as his in-service misconduct appears to be a continuation of pre-service behavior. 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 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 his diagnosed personality disorder."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. The Board noted that you were given multiple opportunities to correct your deficiencies but continued to commit misconduct. Further, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD or a mental health condition. As explained in the AO, your in-service misconduct appears to be consistent with your diagnosed personality disorder, rather than evidence of PTSD or another mental health condition incurred in or exacerbated by military service. Furthermore, it is difficult to consider how PTSD, or another mental health condition would account for your misconduct, particularly as your in-service misconduct appears to be a continuation of pre-service behavior. 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 the 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,

4/2/2024

