



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. 7098-23
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.

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 1 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 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional. Although you were provided an opportunity to respond to the 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.

You enlisted in the Marine Corps and commenced active duty on 31 May 2000. After a period of continuous Honorable service, during which you received non-judicial punishment (NJP) for assaulting a Lance Corporal, you reenlisted on 20 January 2005 and commenced a second period of active duty.

On 1 July 2005, you were promoted to Sergeant (E-5). However, on 24 August 2005, you received administrative remarks (Page 11) counseling concerning deficiencies in your performance and/or conduct. Specifically, you were counseled for uttering a worthless check to repay a \$200.00 debt to a junior Marine. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 7 November 2005, you were issued a Page 11 counseling for failure in the following attributes: leadership, integrity, military presence, bearing, reliability, and self-discipline. You were again advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge.

On 31 January 2005, you pleaded guilty at Special Court Martial (SPCM) to two specifications of failure to obey a lawful order, drunk driving, reckless driving, three specifications of assault of persons operating in a law enforcement capacity, and drunk and disorderly conduct of a nature to bring discredit upon the armed forces, for misconduct that occurred in █ on 26 November 2006. You were sentenced to reduction in rank to E-1, forfeitures, confinement, and a Bad Conduct Discharge (BCD). You were released from confinement, on 5 May 2006, and commenced appellate leave on 9 May 2006. Subsequently, the findings and sentence in your SPCM were affirmed and you were issued a BCD on 23 March 2007. You were issued a DD Form 214 that annotated your previous period of continuous Honorable service.

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 to change your discharge characterization of service, your request for the addition of a second Navy-Marine Corps Achievement Medal (NAM) to your Certificate of Release or Discharge from Active Duty (DD Form 214), your request for an additional DD form 214 that only covers your period of Honorable service so you can use it for █ state benefits and job interviews, and your contentions that your SPCM was in retaliation for you seeking help for PTSD symptoms and the Radio Communications Chief being resentful of your accomplishments, and that your post-discharge conduct includes being drug and alcohol free for five years, raising your son by yourself, starting two businesses, earning a Bachelor's degree, and staying out of trouble. For purposes of clemency and equity consideration, the Board considered your statement and the educational certificates you provided.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 21 February 2024. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He did not submit any medical evidence in support of his claim. He submitted VA compensation and pension rating indicating 100% service connection. The details were not included in his petition. His personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct.

The AO 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 that his misconduct could be attributed to a mental health condition.”

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct, the service-discrediting nature of the offenses, and the likely negative impact your conduct had on the good order and discipline of your command. The Board noted you provided no evidence, other than your personal statement, to substantiate your contention of retaliation from your chain of command. Additionally, the Board concurred with the AO and determined that there is there is insufficient evidence of a mental health condition that may be attributed to military service and insufficient evidence that your misconduct could be attributed to a mental health condition. Finally, the Board noted you were given several opportunities to correct your conduct issued but chose to continue to commit misconduct.

As a result, the Board concluded your conduct constituted a significant departure from that expected of a service member and continues to warrant a BCD characterization. While the Board carefully considered the evidence you submitted in mitigation and commends 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.

The Board declined to issue you a DD Form 214 that only covers your period of continuous Honorable service. Absent a material error or injustice, the Board declined to summarily change a record solely for the purpose of facilitating veterans’ benefits, or enhancing educational or employment opportunities.

Regarding your request for a NAM, the Board recommended that you contact Marine Corps Headquarters regarding your contention that you are entitled to a second NAM on your DD Form 214. Please send your request to:

Commandant of the Marine Corps
Code MMRP
2008 Elliot Road
Quantico, VA 22134

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, _____

4/19/2024



Executive Director

Signed by: _____