



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. 7254-23
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.

You enlisted in the Marine Corps and commenced active duty on 27 September 1989, and completed a period of Honorable service on 26 September 1993. You reenlisted on 23 November 2000. On 31 January 2003, you received non-judicial punishment (NJP) for drunken operation of a motor vehicle. You participated in Operation Phantom Fury in Fallujah, Iraq from 10 October 2004 to 25 January 2005. On 14 May 2005, you reenlisted and began a third period of active duty.

On 12 May 2006, you joined █ as a Drill Instructor. On 25 March 2008, submitted a written request for an undesirable discharge in order to avoid

trial by court-martial for wrongful use of marijuana. Prior to submitting this request, you conferred with a qualified military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. You submitted a statement where you admitted using marijuana and requested the Separation Authority consider separating you with a General (Under Honorable Conditions) (GEN) discharge. Your request for separation in lieu of trial was granted, and your commanding officer was directed to issue you an under Other Than Honorable conditions (OTH) discharge. On 13 June 2008, you were issued an OTH discharge.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 9 September 2010, based on their determination that your discharge was proper as issued.

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 and your contentions that you had two prior periods of Honorable service, that you suffered from PTSD from your tour in Iraq and from the pressure, stress, and lack of sleep during your tour as a Drill Instructor, that your post-discharge conduct includes obtaining a BA in Sociology and a Masters degree in Social work, and you have served in ministry since 2009. For purposes of clemency and equity consideration, the Board considered your statement and the advocacy letter, Church Elder recommendation Letters, and Church Elder Certificate of Ordination 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 13 February 2024. The AO stated in pertinent part:

Petitioner contended traumatic exposure during his Iraq combat deployment combined with the stress of being a drill instructor contributed to symptoms of PTSD and his misconduct.

During military service, the Petitioner was evaluated and diagnosed with alcohol use disorder. There is no evidence that he was diagnosed with PTSD during military service and he has provided no medical evidence of a diagnosis of PTSD. While it is possible that unrecognized symptoms of PTSD could have exacerbated his alcohol use disorder, it is difficult to attribute all of his misconduct to possible avoidance of unrecognized trauma symptoms, given pre-deployment problematic alcohol use.

The AO concluded, "it is my clinical opinion there is insufficient evidence of a diagnosis of PTSD. There is insufficient evidence to attribute all of his misconduct to PTSD or another mental health condition, other than alcohol use disorder."

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 separation in lieu of trial by court martial, outweighed these mitigating factors. In making this finding, the Board concurred with the AO and determined that there is insufficient evidence of a diagnosis of PTSD and insufficient evidence to attribute all of your misconduct to PTSD or another mental health condition. The Board considered the seriousness of your misconduct and the fact it involved a drug offense. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service members. The Board took note of, and concurred with, the observation of the NDRB, who opined that your command exercised its right and obligation to ensure good order and discipline through trial by court martial given the unique circumstances of your position as a Senior Drill Instructor receiving special duty pay and being in a position of special trust and confidence. Therefore, the Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved.

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 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.

In reviewing your record, the Board noted that the NDRB directed a correction to your DD Form 214, specifically, "Block 18, Remarks, should contain the statement: 'CONTINUOUS HONORABLE ACTIVE SERVICE FROM 001122 to 050513'."

You may request this correction by sending a copy of your NDRB notice 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

