



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

██████████  
Docket No. 7381-23

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 Board waived the statute of limitation 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 5 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 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, 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) of a qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the Marine Corps as a minor with parental consent and began a period of active duty on 28 December 1994. On 11 January 1995, you received administrative counseling for the following deficiencies in performance and conduct: immature and irresponsible behavior, poor coping and problem solving skills, avoidant attitude and approach to responsibilities as a Marine, poor attitude relative to military obligations, and self-destructive and suicidal ideations. In light of observed symptoms of depression and suicidal ideation, you were referred, in April 1995, for a psychiatric evaluation which resulted in an initial diagnosis of Personality Disorder (PD), not otherwise specified (NOS) with borderline and anti-social traits. A follow-up psychiatric

consultation, on 10 June 1995, noted that you had received pre-service psychiatric treatment and had made suicide attempts which were not documented in your enlistment records at the time of your application for enlistment and induction to active duty.

On 15 September 1995, you were tried and convicted by Special Court-Martial (SPCM) for violations of the Uniform Code of Military Justice (UCMJ) which included six specifications of unauthorized absence (UA) under Article 86, for which you were sentenced to six months confinement with concurrent partial forfeitures of pay.

Following your release from confinement, you were notified of processing for administrative separation by reason of defective enlistment due to fraudulent enlistment, the specific evidence of which was your failure to disclose pre-existing mental health history which might have otherwise resulted in your disqualification from enlistment or, at a minimum, would have required a more thorough review and waiver process prior to granting enlistment. Additionally, this notification specified that you had also failed to disclose pre-service drug use which had required rehabilitation. Notwithstanding that fraudulent enlistment maybe be processed via administrative separation board procedures with a least favorable characterization of service as under Other Than Honorable conditions, you were specifically informed that the least favorable characterization of service you could receive would be General (Under Honorable Conditions) (GEN). You elected to waive consultation with legal counsel and did not submit a statement on your behalf regarding your proposed discharge. Endorsement of the recommendation for your GEN discharge was forwarded, on 23 February 1996, noting that your unsuitability for further service was directly related to your undisclosed medical history. Your separation, with a characterization of GEN for fraudulent entry, was approved with a separation code of HDA1, and you were discharged accordingly on 14 March 1996.

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) requesting an upgrade with no apparent specific contentions. Your request was considered and denied on 10 October 1999 after the NDRB determined 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 narrative reason for separation to “possibly GFX2 or HFX1” and your contentions that you deny committing fraudulent entry and believe your narrative reason for separation is incorrect. Specifically, you state, “Per the Psychiatrist, [you] had severe anxiety and depression while in the Marine Corps that led to the transfer to a transit platoon and discharge” and that this condition has been ongoing since your discharge. Further, you deny any history of depression or anxiety prior to your entry to active duty and note that you were able to successfully complete boot camp. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

Because you also contend that post-traumatic stress disorder (PTSD) or another mental health condition affected the circumstances of your discharge, the Board also considered the AO provided by a licensed clinical psychologist. This AO stated in pertinent part:

Petitioner provided excerpted, undated treatment discharge records from the Department of Veterans Affairs (VA) listing diagnoses of Major Depressive Disorder (MDD), chronic, severe, recurrent, without psychotic features; PTSD; Cluster B personality traits; Insomnia; history of Generalized Anxiety Disorder (GAD); Nicotine Dependence; Cannabis Use Disorder; and history of Amphetamine Use Disorder in addition to hospitalization and treatment in July of 2023.

Petitioner was appropriately referred for psychological evaluation during his enlistment and properly evaluated on multiple occasions. 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 by definition and indicates lifelong characterological traits unsuitable for military service. Temporally remote and apparently unrelated to his military service, he has received treatment for other mental health concerns from the VA. 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. 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, "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 your narrative reason for separation and separation code remains appropriate. Foremost, with respect to your specific request regarding a potential change to your separation code or narrative reason for separation, the Board notes that neither of the codes you propose are appropriate based on the circumstances of your case. Further, these separation codes and accompanying narrative reasons for separation have since been discontinued to prevent the disclosure of private personal health information regarding mental health diagnoses and, therefore, would not be an appropriate or authorized correction.

Further, the Board found insufficient evidence that PTSD or another mental health condition contributed to your in-service misconduct and noted that your narrative reason for separation is specific to actions you took prior to your entry to active duty and during the period of your initial application for enlistment and induction. The Board expressly found that your narrative reason for separation is specific to the information you chose to improperly conceal or fail to disclose during your enlistment and initial entry onto active duty. Although you deny that you committed fraud at the time of your entry, the Board found insufficient evidence to contradict your failure to disclose relevant pre-service mental health and drug abuse information at the time of your enlistment. Your in-service mental health records clearly demonstrate that you were aware of your pre-service mental health treatment and drug rehabilitation but did not disclose it as

required. Thus, the Board found that the basis of fraudulent entry is clearly supported by the administrative records.

Therefore, 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. 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 is attached 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,

4/29/2024

