

DEPARTMENT OF THE NAVY

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

> Docket No. 7460-23 Ref: Signature Date

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 3 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, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, 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 Reserves (USMCR) and began a period of active duty for training on 8 March 1973. On 5 September 1973, you received an Honorable characterization

for your period of active-duty service and transferred to your Reserve unit. Between October 1973 to January 1974, you accumulated 12 unexcused absences from drill. On 13 January 1974, your commanding officer (CO) informed you of his intent to recommend to the Commandant of the Marine Corps (CMC) that you be assigned involuntary active duty due to your unsatisfactory participation in Marine Corps Reserve. On 7 February 1974, your CO recommended to the CMC that you be involuntarily assigned to active duty in accordance with naval regulation for your failure to satisfactorily participate in the USMCR.

On 16 May 1974, you were informed that you were being assigned involuntarily to active duty for a period of 18 months. On 6 June 1974, you received a physical examination and was found physically qualified to perform involuntary active duty, and directed you to report to your unit on 8 June 1974. On 16 July 1974, you received non-judicial punishment (NJP) for wrongfully and without authority wearing upon your uniform the ________. On 1 April 1975, you received a second NJP for disrespect in language. On 9 July 1975, you received a third NJP for absence from your appointed place of duty.

Consequently, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of unsuitability. You waived your right to submit a statement on your behalf. The CO forwarded your administrative separation package to the separation authority (SA) recommending your administrative discharge from the Marine Corps with a General (Under Honorable Conditions) (GEN) character of service. The SA approved the CO's recommendation and directed your administrative discharge from the Marine Corps. On 1 October 1975, 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 to upgrade your discharge character of service and contention that you incurred PTSD after witnessing your friend's harsh punishment, you started to have mental health issues, such as depression, anxiety, and panic attacks which were later diagnosed as PTSD, your performance started to deteriorate which led to your discharge from the Marine Corps. You further contend that you believe that your service was Honorable, and you have served your country well and proudly. For purposes of clemency and equity consideration, the Board considered the supporting documentation you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 13 February 2024. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Temporally remote to his military service, the VA has granted service connection for a mental health condition. There is no evidence of a diagnosis of PTSD. Unfortunately, available records are not sufficiently detailed to establish a nexus with all of his misconduct. While disrespectful language and UA could be considered behavioral indicators of

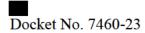
irritability and amotivation associated with depression, it is difficult to consider how wearing an unauthorized ribbon is attributed to a mental health condition. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is post-service evidence from the VA of a mental health condition that may be attributed to military service. There is insufficient evidence of a diagnosis of PTSD. There is insufficient evidence to attribute all of his misconduct 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 NJPs and unsatisfactory participation in the USMCR, outweighed these mitigating factors. In making this finding, the Board the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. The Board also considered the likely negative impact your conduct had on the good order and discipline of your unit. Further, the Board concurred with the AO that while there is post-service evidence from the VA of a mental health condition that may be attributed to military service, there is insufficient evidence of a diagnosis of PTSD and there is insufficient evidence to attribute all of your misconduct to a mental health condition. As the AO explained, the available records are not sufficiently detailed to establish a nexus with all of your misconduct, and there is no evidence that you were diagnosed with a mental health condition in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Therefore, the Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. Finally, the Board noted that you did not provide any evidence, other than your statement, to substantiate your contentions.

As a result, the Board determined significant negative aspects of your active duty service outweighed the positive and continues to warrant a GEN 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 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.

