



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. 7656-23
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 3 May 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 to 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 and your response to the AO.

You enlisted in the Marine Corps and began a period of active duty on 28 October 1981. You reported a pre-service history of marijuana use which was considered insufficient to require a waiver. On 26 May 1982, you were subject to nonjudicial punishment (NJP) for a violation of the Uniform Code of Military Justice (UCMJ) under Article 86 for a month-long period of unauthorized absence (UA).

On 15 June 1982, a naval message reported that you had been diagnosed drug dependent and authorized for rehabilitation treatment, although your records do not contain any disciplinary action related to drug use.

On 23 June 1982, you received NJP for a single UCMJ offense under Article 92 for violation of a company order due to consuming beverages in your barracks area. Then, on 30 June 1982, while still in a restricted status from your second NJP, you absented yourself without authority and remained absent until 21 February 1983, when you voluntarily surrendered to military authority. You subsequently consulted legal counsel and submitted a voluntary request for separation in lieu trial, which was approved. You were discharged, on 31 May 1983, with an Other Than Honorable (OTH) characterization of service.

You previously applied to the Naval Discharge Review Board (NDRB), providing a personal statement and seeking clemency. In your personal statement, attributed your UA to issues with your family at home, which included your mother's illness and your parents divorcing, and your substance use disorder, for which you received drug counseling during your UA period. Your request was considered on 10 May 1986 and denied.

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 to "Honorable" and change your narrative reason for separation and corresponding separation code to "Secretarial Authority." You contend that you were routinely threatened and assaulted by several Marines during your initial school training, and that these Marines also received orders to the same follow-on permanent duty station, where they continued their abuse. You assert that you initially reported these issues to your chain of command to no effect, but that one of the assaults required medical attention. However, you also claim that one of the Marines involved in this assault threatened you if you reported it, causing you to instead state that you had hit your head on your rack. For purposes of clemency and equity consideration, you provided a personal statement, a statement from your spouse, service records, and a brief from your legal counsel.

Because you also contend that post-traumatic stress disorder (PTSD) affected your discharge, the Board also considered the AO, which 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, given pre-service behavior that appears to have continued in service. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given discrepancies in his statements regarding his decision to UA. 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 that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD."

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 SILT discharge, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the clinical opinion of the AO that there is insufficient evidence of a diagnosis of PTSD that may be attributed to your military service or misconduct. Therefore, the Board found that your contended mental health condition did not mitigate your extensive record of misconduct during your military service. In addition, the Board noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and, more likely than not, would have resulted in a punitive discharge and/or extensive punishment at a court-martial. Therefore, the Board determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and possible punitive discharge.

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 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,

5/23/2024

