



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

██████████
Docket No. 7902-23
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 19 April 2024, has carefully examined your current request. 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

Your previously applied to the Board for a discharge upgrade and were denied on 19 May 2016 and 4 May 2022. In both your initial petition and your request for reconsideration, you attributed

your misconduct to mental health problems which you believe were further exacerbated by the contaminated water at Camp Lejeune. You also submitted character letters for consideration of potential grant on the basis of clemency. The facts of your case remain substantially unchanged.

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 and your contentions that: (a) your quality of service prior to your mental health struggles and the passage of time since your discharge should be considered for purposes of clemency, (b) your childhood as the product of foster care placement as a member of the Indigenous Nations contributed to pre-existing mental health issues which you believe were exacerbated by your military service and your exposure to contaminated water, (c) you believe your preexisting mental health issues would have resulted in your disqualification from enlistment if you had received a proper mental health screening at the time of your induction, (d) you used alcohol heavily to self-medicate your mental health problems and would not have committed the misconduct otherwise, (e) you experienced discrimination in your treatment during military service, to include disparate punishment of your offenses and punishment for false accusations such as your NJP for illegal fireworks, (f) your post-discharge mental health problems reflect that you were experiencing insanity at the time you committed your misconduct, (g) your discharge characterization prohibits you from being considered a ██████████ by your tribe, and (h) you have a brain tumor which you believe is also attributable to exposure to contaminated water during your military service but believe you are unable to obtain medical benefits. For purposes of clemency and equity consideration, the Board noted you included an accompanying statement submitted with the assistance of your legal aid counsel, a letter from a psychologist who is the Director of Mental Health Services at the U.S. Public Health Services ██████████ Hospital, previously considered mental health records documenting care in 1996 and 2001, and a 2021 radiology report of a “large right middle cranial fossa arachnoid cyst with mass-effect upon the adjacent right temporal lobe.”

Because you contend that a mental health condition affected your discharge, the Board also considered the AO. The AO noted the following with respect to the mental health evidence you submitted:

Petitioner provided a June 1996 letter from his civilian psychologist who began treatment with him in October 1995. The letter listed a diagnosis of Anxiety Disorder Not Otherwise Specified (NOS) and stated that Petitioner “reports he was in the Marines from 1984 to 1988. He feels he had a nervous breakdown then but wasn’t given psychiatric help ... With his mother’s history of schizophrenia, it is plausible that he did in fact have a psychotic episode at that time.”

He submitted a February 2001 letter from a civilian psychiatrist, which noted borderline intelligence and stated that “psychological testing revealed ... [a profile] consistent with chronic undifferentiated schizophrenia. It is psychologically consistent that he would disassociate ... and run away, i.e., AWOL [UA] from the situation in the Corps.”

The AO advised that there is no evidence 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, and there is no evidence of a diagnosis of post-traumatic stress disorder (PTSD). In rendering a clinical opinion, the AO further noted that:

Temporally remote to his military service, he has provided medical evidence of another mental health condition that may have been experienced during military service. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, particularly given in-service statements that his UA was to care for family members. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) may aid no rendering an alternate opinion.

The AO concluded, "it is my clinical opinion there is post-service evidence from civilian providers of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition."

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 non-judicial punishment and separation in lieu of trial by court-martial (SILT), 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 AO that there is insufficient evidence to attribute your misconduct to a mental health condition. In this regard, the Board specifically noted the same factor of concern raised within the AO, e.g. that you provided an alternative rationale regarding the underlying reason for your extended period of UA at the time you request SILT, stating that you had needed to return home to care for your siblings due to your mother's mental health hospitalization. Therefore, the Board found insufficient evidence that your contended mental health condition contributed to the misconduct which resulted in your Other Than Honorable (OTH) discharge. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities.

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.

To the extent that you raise concern for your current medical diagnosis and need for medical care due to water contamination at Camp LeJeune, the Board believes that your assignment there during the period of contaminated water may qualify for medical treatment benefits with the Department of Veterans Affairs (VA), notwithstanding your characterization of service. Determination of eligibility is fully within the VA's cognizance and beyond the scope of the Board's grant of authority. However, the Board would encourage you to consult your nearest VA representative for assistance in determining potential eligibility for benefits.

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,

5/8/2024

