



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

██████████
Docket No. 8062-23
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 8 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, 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)/mental health condition (MHC) (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). In addition, the Board considered an advisory opinion (AO) from 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 U.S. Marine Corps and entered active duty on 10 December 1984. Upon entry onto active duty, you admitted to preservice discipline of unlawfully caring a weapon, public intoxication, traffic warrants, and criminal trespassing.

On 24 September 1986, you received non-judicial punishment (NJP), for 28 days of unauthorized absence (UA). On 2 March 1987, you were admitted to the naval hospital for alcoholism and discharged on 10 April 1987. On 22 June 1987, you were seen by medical for a laceration to your face from being hit with a beer bottle. On 12 August 1987, you received your second NJP for disobeying an order. You were issued a counseling warning, on 30 August 1987, and ordered to continue to make AA meetings as recommended and further deficiencies in your performance or conduct may result in disciplinary action and in processing for administrative discharge. On 9 December 1997, you received your third NJP for assault on another Marine, and drunk and disorderly conduct. Consequently, you were processed for administrative separation for pattern of misconduct and the Commanding Officer (CO) made his recommendation to the Separation Authority (SA) that you be discharged with an Other Than Honorable (OTH) characterization. The SA accepted the recommendation and directed you be discharged for pattern of misconduct. You were so discharged on 29 February 1988.

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 for a discharge upgrade so you can obtain Department of Veterans Affairs benefits. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

As part of the Board review process, the BCNR Physician Advisor who is a licensed clinical psychologist (Ph.D.), reviewed your contentions and the available records and issued an AO dated 11 July 2023. The Ph.D. stated in pertinent part:

Petitioner submitted a letter from his treating physician indicating a diagnosis of Dementia that reportedly started in 2007. He also submitted a letter from █ Health Psychiatry noting treatment since November 16, 2022 for “personal history of TBI, and unspecified dementia with behavioral disturbance.” Finally, a diagnostic summary was provided indicating diagnoses of TBI since 2008, Bipolar Disorder since 2008 and Anxiety since 2010. There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service other than Alcohol Use Disorder. He was properly evaluated and treated via multiple modalities and inpatient hospitalization, but unfortunately, he continued to use alcohol, which evidently contributed to his misconduct. His pre-service screening noted two incidents of public drunkenness, thus his alcohol use disorder was likely in effect prior to service. He submitted evidence of post-service diagnoses of Bipolar Disorder, Generalized Anxiety Disorder and Dementia, which are temporally remote to service. His personal statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his misconduct. Additional records (e.g., post-service mental health records describing the Petitioner’s diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The Ph.D. concluded, “it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed 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 NJPs, 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 and determined there is insufficient evidence that your misconduct could be attributed to a mental health condition. As explained in the AO, you were properly evaluated and treated via multiple modalities and inpatient hospitalization, but continued to use alcohol, which evidently contributed to your misconduct. Further, the Board noted you were given multiple opportunities to correct your conduct deficiencies but you chose to continue your misconduct. 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.

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,

5/16/2024

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Executive Director

Signed by: █