



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

██████████
Docket No. 8336-23
Ref: Signature Date

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Dear ██████████

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 31 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 6 October 1999. You were granted a waiver for pre-service marijuana use. You served approximately nine months without incident prior to your first nonjudicial punishment (NJP), on 6 July 2000, for violation of the Uniform Code of Military Justice under Article 86 by failure to go to your appointed place of duty. Your punishment included reduction to the paygrade of E-1, forfeiture of pay, and 14 days restriction. Shortly thereafter, you were subject to a second NJP, on 23 August 2000, for another Article 86 offense for failure to go to your appointed duty. You were awarded 7 days of restriction and additional forfeiture of pay. These offenses occurred while you were still in a student training status, prior to assignment to your first operational tour of duty.

On 17 September 2000, you were transferred to Marine Corps Air Station ██████████ (██████████), ██████████, for duty with Crash Fire Rescue (CFR) aboard the station airfield. On ██████████, ██████████, a two-seat AV8B Harrier crashed into the runway. The explosion from the impact required immediate response from on-duty CFR. The instructor pilot's body could not immediately be removed from the wreckage until a special team could arrive to safely remove the body.

Approximately three months after this crash, on 8 May 2001, you received your third NJP for another Article 86 violation due to 45 minute unauthorized absence from an air show working party. In addition to your punishment of reduction to the paygrade of E-1 and forfeiture of pay, which was suspended for a period of 6 months, you were placed into the Correctional Custody Unit (CCU) for a period of 30 days. You were also issued administrative counseling, which warned you that continued misconduct could result in administrative separation. Shortly after being released from CCU, you committed an alcohol-related offense under Article 112 for being drunk while on duty as a fire fighter at CFR, with a .23 blood alcohol content (BAC). The punishment for your fourth NJP included 60 days restriction in addition to forfeiture of pay and another administrative counseling warning.

After your first alcohol-related incident (ARI), you were scheduled for substance abuse screening, diagnosed with alcohol abuse, and placed into outpatient treatment. However, you were a no-show for scheduled treatment on 14 September 2001 and subject to a fitness for duty exam which identified you as having a .11 BAC. This second ARI resulted in a recommendation, on 21 September 2001, for your transfer from a general outpatient status into intensive outpatient treatment. However, you also received a fifth NJP for your second ARI, for violation of Article 134, breaking restriction by consuming alcoholic beverages, in addition to Article 92 for being drunk on duty. You were issued another administrative counseling documenting that you were an alcohol treatment failure due to your refusal to participate.

Consequently, on 22 October 2001, you were notified of processing for administrative separation with a recommendation for your discharge under Other Than Honorable (OTH) conditions for misconduct due to a pattern of misconduct and alcohol rehabilitation failure. You elected to waive your right to consult military legal counsel or to request a hearing before an administrative separation board. On 13 November 2001, your administrative separation under OTH conditions was approved for pattern of misconduct and you were so discharged on 28 November 2001.

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 your contentions that you developed PTSD as a result of your CFR duties in response to the fatal Harrier crash. You describe that you began drinking to self-medicate and, therefore, the misconduct which subsequently resulted in your discharge is directly attributable to this underlying trauma. You also claim that you experienced racial discrimination and disparate treatment from your supervisors, to include being scheduled for duty during periods which conflicted with your treatment schedule and this interfered with your ability to satisfactorily complete rehabilitation. You also believe that your evidence of post-discharge rehabilitation and character warrant consideration of clemency in addition to liberal consideration of your PTSD. For purposes of clemency and equity consideration, you submitted a personal statement, three letters in support of your character, evidence documenting the aviation mishap at ██████████ during your CFR assignment there, a letter documenting

residential and outpatient treatment during 2017 and 2018 for substance use disorder, a journal article on Addictive Behaviors, and a DSM V Report from an inpatient admission for substance abuse treatment from 14 September – 14 October 2017.

Because you contend that PTSD or another mental health condition affected the circumstances of your discharge, the Board also considered the AO provided by a licensed clinical psychologist, which stated in pertinent part:

The Petitioner submitted post-service attendance record from ██████████ House (recovery program) indicating both residential and outpatient treatment from September 2017 through January 2018. Records from this facility indicate a diagnosis of Alcohol Use Disorder, Severe, however it appears as though part of the document was blacked out and additional diagnoses/notes are therefore undeterminable. He submitted an article on the relationship between addictive behaviors and PTSD, as well as an article regarding pilots who died in Harrier crashes. He also submitted a partial psychiatry intake note from the VA dated October 2023 which notes a positive screen for PTSD. No further notes were submitted from the VA, and thus it is unknown whether or not the Petitioner continued any treatment. He submitted three character references in support of his claim.

The Petitioner contends that he witnessed a harrier crash on February 3, 2001 and subsequently participated in the crash fire team response thereof. There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service other than Alcohol Use Disorder. While it is possible that he was suffering from PTSD following the accident, two of his NJP's occurred prior to the event.

Additionally, although counseled and given additional grace to complete IOP, he continued to no-show for treatment and signed refusal thereof knowing it was against medical advice. Additional records (e.g., all 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 AO concluded, "it is my considered clinical opinion there is sufficient evidence of a post-service mental health condition (PTSD) that may be attributed to military service. There is insufficient evidence that all of his misconduct could be attributed to a mental health condition."

After considering your rebuttal evidence to the AO, the AO remained unchanged.

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 that there is insufficient evidence that all of your misconduct could be attributed to a mental health condition. The Board expressly concurred that your third NJP repeated misconduct from your two earlier NJPs, both of which pre-dated the Harrier crash. Additionally, the Board was not persuaded by your contention that the two pilots who died in the crash were people who you "knew well" due

to being on the same training field. The Board considered it unlikely that you, as a very junior enlisted Marine in the grade of E-2, would have spent any considerable time with officers in the grades of O-4 or O-3 who were not members of your command or even part of your chain of command, whether in a professional or personal capacity. Given these considerations with respect to the general credibility of your personal statement, the Board found that you submitted insufficient evidence of your personal role and experience in responding to the incident to definitively establish the nature of your trauma exposure such that it might have contributed to your self-medicating abuse of alcohol. Additionally, the Board noted that the remainder of your misconduct was incident to ARIs for which you expressly refused to further participate in necessary treatment, in spite of being aware of your need for intensive outpatient rehabilitation and the consequences of continued alcohol-related misconduct. Thus, the Board determined that you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct.

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 and commends you for your post-discharge accomplishments, 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,

6/24/2024

