



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. 9184-23
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 limitations 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 July 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)/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). The Board also considered an advisory opinion (AO) from a qualified mental health professional, dated 23 April 2024, and your response to the AO.

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 entered active duty with the Marine Corps on 17 April 1990. On 4 May 1991 and 20 May 1991, you were counseled on not being recommended for promotion to Lance Corporal and for your lack of attention to duty and professionalism. On 6 June 1991, you were counseled on your failure to follow direction, procedures, and guidelines set forth by your superiors. On 15 January 1992, you received non-judicial punishment (NJP) for absence from appointed place

of duty, failure to go at time prescribed to appointed place of duty, damage to government property, and operating a government vehicle in a reckless manner. On 11 March 1992, you received NJP for failure to go at time prescribed to appointed place of duty and failure to obey a lawful order. On 9 April 1992, you were counseled on your continued misconduct, failure to meet grooming and uniform regulations, and your MOS knowledge.

Consequently, you were notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct. You elected to consult with legal counsel and requested an administrative discharge board (ADB). However, starting on 19 June 1992, you commenced a period of UA lasting three days. Subsequently, your commanding officer (CO) recommended an Other Than Honorable (OTH) by reason of misconduct due to a pattern of misconduct. On 24 June 1992, you again commenced a period of UA lasting one day. On 9 July 1992, you commenced another period of UA and never returned. On 30 July 1992, the ADB adjudicated your case in absentia, found that you committed misconduct, and recommended you receive an OTH characterization of service. The separation authority concurred with the ADB and directed an OTH discharge by reason of misconduct due to a pattern of misconduct. On 30 September 1992, you were so discharged while still in absentia.

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 contentions that you incurred PTSD or a mental health condition during military service, which mitigated the circumstances of your discharge, your wife's Bipolar disorder contributed to your misconduct, and several Marines testified in writing that you were a stellar Marine. For purposes of clemency and equity consideration, the Board noted you submitted a personal statement and advocacy letters but no supporting documentation describing post-service accomplishments.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 23 April 2004. The mental health professional stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. He did not submit any medical evidence in support of his claim. 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 AO 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."

In response to the AO, you submitted a personal statement that provided additional information regarding the circumstances of your case.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your NJPs and series of UAs at the end of your military career, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your conduct had on the good order and discipline of your command. Further, contrary to your contention that you were a stellar Marine, the Board found that your conduct showed a complete disregard for military authority and regulations. The Board noted that a Marine's service is characterized at the time of discharge based on performance during the entire enlistment. In your case, the Board considered that you received four negative counselings, two NJPs, and deserted from the Marine Corps as you were being administratively processed for separation. Finally, the Board also concurred with AO that there is insufficient evidence to attribute your misconduct to a mental health condition. As pointed out in the AO, you provided no evidence to establish clinical symptoms or provide a nexus with your 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 provided 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,

7/18/2024

