



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. 9851-23
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 10 June 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, 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 the advisory opinion (AO) furnished by a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

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 enlisted in the Marine Corps and commenced active duty on 26 May 1998. On 7 April 1999, you commenced a period of unauthorized absence (UA) that ended with your surrender on 27 May 1999. You subsequently received non-judicial punishment (NJP), on 14 June 1999, for this UA.

On 29 February 2000 and 8 January 2002, you were issued administrative remarks counseling concerning your failure to maintain good order and discipline in your living quarters. Additionally, on 29 January 2002, you were counseled regarding multiple violations of the Uniform Code of Military Justice (UCMJ) Article 92, for failure to disobey a protective order to stay away from your wife and residence. You were also counseled for making false statements about whether or not you encountered your wife.

On 30 January 2002, your commanding officer recommended you be administratively separated from the Marine Corps due to mental unsuitability following an episode during which you threatened to kill members of your command and your wife. In relation to this episode, on 1 February 2002, you were assessed by a medical officer who recommended you be administratively separated for personality disorder.

The medical officer provided:

The member is not mentally ill and is responsible for his behavior. However, this member does manifest a long-standing disorder of character and behavior which is of such severity as to interfere with his ability to function effectively in the military environment. Individuals with this type of personality disorder are unproductive and often consume considerable command attention and resources. The member has adjusted poorly to the demands of military service and is unmotivated for continued military service despite appropriate leadership, counseling, discipline, and other methods. Although not imminently suicidal or homicidal, the member may pose a continuing risk to do harm to self or others and negatively impact unit effectiveness and morale if retained in naval service. Therefore, it is strongly recommended that...the member be processed expeditiously for an administrative discharge...by reason of unsuitability...In the examiner's opinion, the patient does not possess a severe mental disease or defect...and is considered competent.

On the same day, you were also counseled regarding your threat to kill others and your diagnosis of personality disorder.

On 13 February 2002, you were notified of pending administrative separation processing with an Other Than Honorable (OTH) discharge by reason of pattern of misconduct. You waived your rights to consult counsel, submit a statement, or have your case heard by an administrative separation board. The Separation Authority subsequently directed your discharge with an OTH characterization of service, and you were so discharged on 15 February 2002.

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 change your discharge characterization of service and your contentions that you believe your discharge should be amended to a medical discharge due to your time in service and your belief that your discharge would not have happened but for your mental health. For purposes of clemency and equity

consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

As part of the Board's review process, a qualified mental health professional reviewed your contentions and the available records and issued an AO dated 29 April 2024. The AO noted in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. A personality disorder diagnosis is pre-existing to military service by definition, and indicates lifelong characterological traits unsuitable for military service, since they are not typically amenable to treatment within the operational requirements of Naval Service. Unfortunately, he has provided no medical evidence to support his claims. His in-service misconduct appears to be consistent with his diagnosed personality disorder, rather than evidence of another mental health condition incurred in or exacerbated by military service. 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 mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to a mental health condition, other than personality disorder."

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and multiple counselings, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact it involved threats of violence against others. Further, the Board concurred with the AO that there is insufficient evidence to attribute your misconduct to a mental health condition, other than your personality disorder. As explained in the AO, you provided no medical evidence to support your claims and your in-service misconduct appears to be consistent with your diagnosed personality disorder, rather than evidence of another mental health condition incurred in or exacerbated by military service. Therefore, the Board determined you were mentally responsible for your misconduct and were properly discharged based on the nature of your conduct.

Regarding your request for a disability discharge, the Board determined insufficient evidence exists to support your request. First, the Board noted that your 1 February 2002 medical assessment determined you were not mentally ill and your conduct was the result of your personality disorder. Therefore, the Board determined you did not have a qualifying disability condition to merit a referral to a medical board or be considered unfit as defined by the Disability Evaluation System. Second, the Board also noted that you did not qualify for disability processing based on your misconduct that resulted in an OTH 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. 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. 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,

6/25/2024

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Executive Director

Signed by: █