



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

██████████
Docket No. 10171-23
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 the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

A three-member panel of the Board, sitting in executive session, considered your application on 18 June 2024. The names and votes of the members of the panel 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 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)/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). Additionally, the Board considered the 2 May 2024 Advisory Opinion (AO) provided by a Licensed Clinical Psychologist. 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 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.

The Board carefully considered your request to reinstate you to the rank of Gunnery Sergeant (GySgt) and any associated backpay. The Board considered your contentions that you were you a GySgt for over six years, served honorably under two enlistment contracts, and were honorably retired. The Board also considered your contention that an administrative separation (ADSEP) board recommended that you be retained after considering all facts and fully understanding what was going on with you. Finally, the Board considered your assertion that you were going

through some tough times at the time of your transition to include the loss of your father. For purposes of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

Because you claimed that PTSD should mitigate your misconduct, the Board considered the AO. The AO stated in pertinent part:

Petitioner was apparently diagnosed with PTSD during military service, for which the VA has granted service connection. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, as the Petitioner denied having engaged in misconduct but stated that the guilty plea was for expedience. 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 in-service evidence and post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is some evidence to attribute his misconduct to PTSD."

The Board substantially concurred with the AO. In this regard, the AO noted that the available records were insufficient to establish nexus with all your misconduct. Further, the Board also noted the Deputy Commandant, Manpower and Reserve Affairs (DC, M&RA), on behalf of the Commandant of the Marine Corps, was aware of your diagnosis of PTSD when he determined the nature and quality of your misconduct did not sufficiently mitigate your separation.

The Board noted you were found guilty of one count of violating [REDACTED] Code § 18.2-371(ii), a Class I misdemeanor for engaging in a sexual relationship with your neighbor's teenage daughter (15 years or older). As a result, you received a jail sentence of 12 months, with 11 months suspended for a period of one year conditioned on good behavior. The Board also noted, because of the nature of the misconduct, pursuant with MCO 1900.16 (MARCORSEPMAN), the command was required to process you for separation. On 1 March 2023, the ADSEP Board recommended that you be transferred to the Fleet Marine Corps Reserve/retired list in your current paygrade (E-7). However, on 5 June 2023, DC, M&RA reviewed the ADSEP Board's recommendation and directed that you be transferred to the Fleet Marine Corps Reserves (FMCR) in the grade of E-6 with an Honorable characterization of service by reason of unacceptable conduct.

In regards to your contention the ADSEP Board recommended that you be retained after considering all facts concerning, the Board noted pursuant with the MARCORSEPMAN, the final determination of separation, characterization of service, and grade rests exclusively with the DC, M&RA. Thus, the Board determined DC, M&RA acted within his discretionary authority when directing that you be retired in the lesser grade of E-6 based on your civil conviction. Thus, the Board concluded that there is no probable material error, substantive inaccuracy, or injustice warranting correction to your record. 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. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. 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,

6/27/2024

