



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. 10251-23
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 5 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) (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 also considered an advisory opinion (AO) furnished by qualified mental health provider. Although you were afforded an opportunity to submit an AO rebuttal for consideration, you chose not to do so.

You originally enlisted in the U.S. Marine Corps and began a period of active duty service on 22 July 1995. During your first enlistment, on 17 October 1996, you received non-judicial punishment (NJP) for disrespect. You did not appeal your NJP. You reenlisted for a period of four (4) years on 27 November 1999.

On █, your command issued you a “Page 11” counseling sheet (Page 11) documenting your substandard performance of your duties as a Sergeant in the Marine Corps. The Page 11 noted that you have not shown the responsibility, willingness, and initiative expected from a person holding such a rank. The Page 11 also noted that you failed to complete the Section Chief Course due to being dropped from the course for being an academic failure. You did not elect to submit a Page 11 rebuttal statement.

On █, your command issued you another Page 11 documenting your continued substandard performance of your duties as a Sergeant in the Marine Corps. The Page 11 noted you again failed to complete the Section Chief Course due to being dropped from the course for being an academic failure. You did not elect to submit a Page 11 rebuttal statement.

On █ pursuant to your guilty pleas, you were convicted at a Special Court-Martial of: (a) making a false official statement to an NCIS Special Agent, (b) assaulting a woman, and (c) two separate specifications of committing indecent acts with a woman. You were sentenced to hard labor without confinement for forty-five (45) days and a reduction in rank to Corporal (E-4).

On █, your command issued you a Page 11 warning documenting your commission of serious offenses such as assault, indecent acts, and giving false official statements. The Page 11 advised you that a failure to take corrective action and any further UCMJ violations may result in judicial or adverse administrative action, including but not limited to administrative separation.

On █, you were convicted at a Summary Court-Martial (SCM) of the wrongful use of methamphetamine. You were sentenced to confinement for thirty (30) days, forfeitures of pay, and a reduction in rank to Private (E-1). On 6 August 2002, you underwent a drug dependency screening at the Substance Abuse Counseling Center (SACC). SAAC personnel determined that you did not have a diagnosis of drug dependency. On 13 August 2002, the Convening Authority approved the SCM sentence as adjudged.

Consequently, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to drug abuse. You waived your right to consult with counsel and to request an administrative separation board and your commanding officer recommended to the Separation Authority that you receive an under Other Than Honorable conditions (OTH) discharge characterization. The Staff Judge Advocate to the Convening Authority determined your separation proceedings were legally and factually sufficient. Ultimately, on 2 October 2002, you were discharged from the Marine Corps for misconduct with an OTH characterization of service and were assigned an RE-4B reentry code.

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 and your sole contention that you have a medical diagnosis of schizoaffective bipolar disorder. 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, a licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records and issued an AO dated 16 May 2024. The Ph.D. stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided evidence of a mental health condition that is temporally remote to his military service and appears unrelated. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service 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) may aid in rendering an alternate opinion.

The Ph.D. 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."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your pattern of misconduct was not due to mental health-related conditions or symptoms. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your cumulative misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. Additionally, the Board determined that illegal drug use by a Marine is contrary to Marine Corps core values and policy, renders such Marines unfit for duty, and poses an unnecessary risk to the safety of their fellow Marines. The Board determined that characterization under OTH conditions is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. 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,

7/12/2024

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