



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. 10280-23
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 17 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, 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). 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 5 August 1991. On 12 February 1992, you received non-judicial punishment (NJP) for disobeying a lawful order. From 29 December 1992 to 28 April 1993, you participated in █. On 18 June 1993, you were issued an administrative remarks (Page 11) counseling concerning

deficiencies in your performance and/or conduct for failing to return to the ship on time due to intoxication. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 11 December 1993, you received Page 11 counseling regarding undisciplined behavior and endangering and degrading a fellow Marine by ganging up on him with three other Marines. You were again advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 21 January 1994, you completed the Level I Alcohol Abuse Rehabilitation Program.

On 8 April 1994, you received NJP for violating the Liberty Risk Letter you had been issued for a previous incident, by consuming alcohol, remaining absent overnight, and being in civilian clothes. On 14 April 1994, you received NJP for violating restriction and your extra duty letter by wrongfully consuming alcohol. On 18 April 1994, you again received Page 11 counseling concerning deficiencies in your performance and/or conduct and advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 13 June 1994, you received NJP for failure to go at appointed time to physical training and disrespectful language to a Sargeant.

Consequently, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due pattern of misconduct. You elected to consult with legal counsel and subsequently waived your rights to submit a statement or have your case heard by an administrative discharge board. The Separation Authority directed your discharge with an OTH characterization of service, and you were so discharged on 16 September 1994.

You previously applied to this Board for an upgrade to your characterization of service where you contended that your discharge was unjust because you were young, your overall record of service was Honorable, and because you suffered from PTSD. The Board denied your request on 5 June 2013.

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 characterization of service and your contentions that your misconduct was due to undiagnosed and untreated PTSD you incurred after a member of your unit died during your deployment to Somalia, you have struggled with mental health and substance abuse post-discharge, you are now a family specialist on an Assertive Community Treatment team, you completed your Master's degree, and you are currently completing a concentration in healthcare management. For purposes of clemency and equity consideration, the Board considered your statement, the advocacy letters, medical documentation, and college transcripts you provided.

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 2 May 2024. The AO stated in pertinent part:

Petitioner contends he incurred Post Traumatic Stress Disorder (PTSD) and other mental health concerns during military service, which may have mitigated the circumstances of his separation.

In February 1992, he received non-judicial punishment (NJP) for disobedience by renting a U-Haul truck to transport troops. In April 1992, he received medical treatment for injuries to his spine due to an automobile accident. From December 1992 to April 1993, he participated in █. In March 1993, he was formally counseled regarding disobedience. In June 1993, he was formally counseled regarding excessive alcohol consumption and late return from liberty. In December 1993, he was formally counseled regarding undisciplined behavior and endangering and degrading a fellow Marine. In March 1994, he completed Level I substance abuse education. In April 1994, he received two NJPs for disobedience by breaking liberty risk restrictions of drinking alcohol and leaving the building in civilian attire and not returning until the following morning. He was formally counseled regarding drunkenness on liberty, which resulted in his falling into a ditch and cutting his forearm. He received an evaluation by a military psychiatrist and was diagnosed with moderate Alcohol Dependence and a severe Personality Disorder, Not Otherwise Specified (NOS), with borderline and antisocial features. In June 1994, he was formally counseled and received NJP for unauthorized absence (UA) from physical fitness training and disrespectful language. In September 1994, he was discharged under other than honorable conditions. He was diagnosed with Alcohol Dependence and recommended for Level III inpatient treatment and found qualified for discharge. He denied other mental health symptoms during his separation physical, which also noted he “was in MVA [motor vehicle accident] in ’92 and suffered compression fx [fracture] of several vertebrae. No documentation in health record, member states he has records at home. Denies problems since being d/c’d [discharged] from hospital.”

Petitioner contended he incurred PTSD and other mental health concerns following a combat deployment to Somalia. He submitted statements in support of his experience and evidence of character and post-service accomplishment.

He provided mental health records from the Department of Veterans Affairs (VA), describing evaluation and treatment from October 2017 to February 2023. Petitioner’s mental health diagnoses were listed to be Borderline Personality Disorder, PTSD, Cannabis Use Disorder, and Attention Deficit Hyperactivity Disorder (ADHD), with a history of polysubstance abuse. Additional information was needed to rule out the potential presence of Bipolar II Disorder.

He submitted evidence of substance use treatment in 2015. He provided civilian psychiatric treatment records from March 2020 to December 2022, listing diagnoses of Alcohol Dependence, in remission; Bipolar Disorder, current episode depressed, moderate; PTSD, chronic, “stemming from multiple domestic violence traumas in childhood and teenage/young adulthood military experiences;” ADHD,

unspecified type; Insomnia due to other mental disorder; and Generalized Anxiety Disorder.

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His personality and alcohol use disorder diagnoses were 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. Problematic alcohol use is incompatible with military readiness and discipline and does not remove responsibility for behavior. Post-service, he has also received a diagnosis of PTSD that has been attributed to military service in part. However, his in-service misconduct appears to be consistent with his diagnosed personality disorder, as the misconduct predated his Somalia deployment and continued through his military service.

The AO concluded, “it is my clinical opinion there is post-service evidence from the VA and civilian providers of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another 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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your repeated misconduct had on the good order and discipline of your command. Additionally, the Board concurred with the AO and determined that, while there is post-service evidence from the VA and civilian providers of a diagnosis of PTSD that may be attributed to military service, there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition, other than personality disorder. As explained in the AO, your in-service misconduct appears to be consistent with your diagnosed personality disorder, as the misconduct predated your Somalia deployment and continued through your military service. Finally, the Board considered you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct; which ultimately led to your 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. While the Board carefully considered the evidence you submitted in mitigation and commends 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 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,

7/2/2024

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Executive Director

Signed by: ■