



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. 10486-23
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 14 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). 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 3 December 1968. Your pre-enlistment physical examination, on 3 December 1968, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. Following a period of continuous Honorable service and multiple reenlistments, you last reenlisted, on 17 July 1984, for a period of five (5) years.

On 13 June 1985 you received a "Page 11" counseling sheet (Page 11) documenting your failure of the semi-annual physical fitness test and assignment to a battalion remedial physical fitness program. You did not submit a Page 11 rebuttal statement.

On 27 July 1987, you received non-judicial punishment (NJP) for assaulting a female Lance Corporal. You reportedly removed her blouse and boots and fondled her. You did not appeal your NJP.

On 31 July 1987, you provided a voluntary written statement to the Naval Investigative Service (NIS). Your statement was made with an understanding of your rights, and you made your statement voluntarily with no threats or promises having been extended to you. In your voluntary statement, you admitted to sexual intercourse, oral sodomy, and indecent liberties with your daughter, a female minor under 16 years of age, beginning when she was approximately 11 years of age, in late 1982, and continued through March 1986, when she was 15. You also admitted on several occasions you made your daughter undress and observe her mother and you engage in sexual intercourse. On one of those occasions, you described having engaged in sexual intercourse with your daughter, followed by your wife, simultaneously. You further admitted to committing adultery and impregnating a female ██████████ national.

On 11 August 1987, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to the commission of serious offenses. You consulted with counsel and elected your right to submit a rebuttal statement to the proposed separation, but you waived your right to request a hearing before an administrative separation board.

On 18 August 1987, your commanding officer (CO) strongly recommended your separation from the Marine Corps with an under Other Than Honorable conditions (OTH) discharge characterization. Your CO noted in his recommendation, in part:

The seriousness of the offenses committed by [Petitioner] exceed the importance of his previous performance of duty...in contradiction to his statement...and as evidenced by the recent nonjudicial punishment imposed against him...his problem has in fact channeled itself into his day to day military performance of duty and association with female Marines at this command...further retention of [Petitioner] would have a detrimental effect on the morale, discipline, and military effectiveness of this command or any other command to which he may be assigned. Separation by reason of Misconduct due to commission of serious offenses with a discharge under other than honorable conditions is strongly recommended.

On 14 September 1987, the Staff Judge Advocate (SJA) to the Commander, ██████████ ██████████ determined your separation proceedings were legally and factually sufficient. The SJA noted that given your number of years of service, the Commandant of the Marine Corps (CMC) was required to take final action on your discharge. In the interim, your separation physical examination, on 14 September 1987, and self-reported medical history both noted no neurologic or psychiatric issues or symptoms.

On 4 November 1987, the CMC approved and directed your OTH discharge. Ultimately, on 17 November 1987, you were discharged from the Marine Corps for misconduct with an OTH discharge characterization and were assigned an RE-4 reentry code.

In 1988, pursuant to your pleas, you were convicted of multiple sexual offenses in ██████████ ██████████ State District Court, ██████████, ██████████. You were sentenced to life in prison and remain incarcerated in ██████████.

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 contentions that: (a) all of your past discharges up through 16 July 1984 have been honorable, (b) your service to the United States Marine Corps have and this nation has been served honorably and your fitness reports reflect your performance on the job, (c) you ask that the Board evaluate your entire record of service in deciding on the recommendation to be made, (d) the Marine Corps was your life and you regarded it a privilege of serving in its ranks as a great honor, (e) your problem was not the fault of the Marine Corps and did not consider the Marine Corps responsible for them, (f) your problems have never once impacted upon either the Marine Corps, or upon your performance as a Marine, (g) you believe it was unjust to characterize your entire service as other than honorable, and (h) you believe you served the Marine Corps and this nation in an honorable manner, and you believe your prior service merits such a characterization. For purposes of clemency and equity consideration, the Board considered the entirety of 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 3 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. He has provided no medical evidence to support his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly as incest is not a typical symptom of PTSD or another mental health condition. 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 diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another 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 that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the egregious misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Moreover, the Board concluded that your multiple sexual offenses, including incest with a minor forming the underlying basis of your OTH discharge, were not the type of misconduct that would be excused or mitigated by any mental health conditions even with liberal consideration. Additionally, 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 misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your disturbing 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 disagreed with your contention your problems never once impacted upon either the Marine Corps, or upon your performance as a Marine. The Board noted that in the week before your voluntary statement to NIS, you received NJP for groping and assaulting a female junior enlisted Marine. The Board also disagreed with your contention that it was unjust to characterize your entire service as OTH when you were discharged in 1987. The Board noted that your OTH discharge characterization covers only your last enlistment period from 17 July 1984 through 17 November 1987.

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. 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,

6/25/2024

