



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. 10630-23
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 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 Board waived the statute of limitation 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 24 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 the 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 to 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) of a qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you chose not to do so.

You enlisted in the Marine Corps and began a period of active duty on 22 July 1975. On 20 November 1975, you were dropped from your initial occupational training due to academic difficulties; however, this action appeared connected to a 25 November 1975 nonjudicial punishment (NJP) for a violation of Article 86 of the Uniform Code of Military Justice (UCMJ) due to your failure to go at the time prescribed to your appointed place of duty. As punishment, you were required to forfeit \$50 of pay.

After fewer than five months of active service, you absented yourself without authority on 19 December 1975 and remained in an unauthorized absence (UA) status until your return on 2 March 1976. Charges were referred to Special Court-Martial (SPCM) for your 73-day period of UA, in violation of Article 86 of the UCMJ, as well as Article 92 for failure to report by 2400, 18 December 1975, as directed by your Permanent Change of Station orders. In response to your pending SPCM charges, on 10 March 1976, you submitted a voluntary request for separation in lieu of trial (SILT), acknowledging that your recommended characterization of service incident to discharge would likely be undesirable (OTH). You also submitted a handwritten personal statement in support of your request in which you stated that you did not like the Marine Corps because you could not be yourself, you could not adjust to military life, you were doing, or considering doing, things you feared or dreaded, to include homosexuality, you had started smoking marijuana at the age of 13 and had continued to do so after beginning active service, you had started “shooting and popping pills” to ease your nerves, your father was deceased and you were the oldest of your 8 siblings, your baby sister had just died which caused your mother to start drinking again, and your family needed your help. Your request for SILT was approved following legal review, and you were discharged, on 16 March 1976, with an OTH consistent with your SILT request.

You previously requested review by the Naval Discharge Review Board (NDRB), seeking a clemency review with respect to letters documenting your post-discharge employment, citing irregularities in your separation proceedings, asserting that you had attempted to seek a hardship discharge due to your family’s crisis after your sister’s death but had not received assistance, and asserting that your personal and psychiatric problems impaired your ability to serve. The NDRB reviewed your claims on 5 March 1981 and denied relief at that time.

The Board carefully weighed all potentially mitigating factors, to include your desire to upgrade your discharge and your contentions that your discharge during your first year of service was directly attributable to mental health problems which arose due to the traumatic experience of your nine-year old sister’s death, which occurred during your military service. You outline the Kurta factors which you consider applicable to your contentions, which included that you only received 10 days of leave following your sister’s death, you believe you were entitled to 22 work days of emergency leave under 5 U.S.C.S. 6323, you could have assisted your family and had enough time to grieve if you had been granted an appropriate period of emergency leave, your request for additional emergency leave was denied, you experienced changes in behavior that included depression and anxiety, the trauma of your sister’s death and stress of becoming your family’s care taker led to your becoming homeless for a number of years after your discharge, your post-service accomplishments warrant relief on the basis of clemency, and you have been working the past several years with the Salvation Army helping veterans and vulnerable groups. For purposes of clemency and equity consideration, the Board noted you submitted evidence to substantiate the date of your sister’s death.

Because you also contend that post-traumatic stress disorder (PTSD) or another mental health condition affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition while in military service, or that he exhibited any symptoms of a mental health condition. His statement is not sufficiently detailed to provide a nexus with

his misconduct. Additional records (e.g., mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion there is insufficient evidence of mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and SILT request, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to a mental health condition. As explained in the AO, there is no evidence that you were diagnosed with a mental health condition while in military service, or that you exhibited any symptoms of a mental health condition. Additionally, the Board observed that your contention you could have resolved your family issues if you received additional emergency leave runs contrary to your previous contention to the NDRB that you needed to request a hardship discharge to care for your family, which you reiterate as being one of the stressors you experienced which contributed to your mental health concern. The Board noted that you acknowledge having experienced homelessness due to your mental health concerns and that you have since found gainful employment and an opportunity to assist your veteran community; however, you also did not submit any external supporting evidence documenting these post-service accomplishments or your initial post-discharge concerns in caring for your family. Furthermore, the Board took into consideration your SILT statement that you hated the Marine Corps and would commit further misconduct if forced to honor your enlistment contract. Finally, the Board noted that the misconduct that led to your request to be discharged in lieu of trial by court-martial was substantial and, more likely than not, would have resulted in a punitive discharge and/or extensive punishment at a court-martial. Therefore, the Board determined that you already received a large measure of clemency when the convening authority agreed to administratively separate you in lieu of trial by court-martial; thereby sparing you the stigma of a court-martial conviction and possible punitive 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, 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 the 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 is attached 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,

8/9/2024

[REDACTED]