



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. 10640-23
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 15 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). 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 12 August 2002. On 29 August 2003, you received non-judicial punishment (NJP) for failure to obey an order or regulation by underage drinking. On 2 March 2004, you received NJP for violating the liberty policy by leaving camp during curfew and drinking underage. On 7 July 2004, you received NJP

for failure to go to your appointed place of duty, underage drinking, and dereliction of duty by drinking in a duty status. Additionally, you were issued an administrative remarks (Page 11) counseling concerning deficiencies in your performance and/or conduct. You were advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. You were also found to be alcohol dependent by the Substance Abuse Counseling Center. You received your fourth NJP, on 20 September 2004, for underage drinking, dereliction of duty by reporting for duty while intoxicated, and possession of hard liquor. Subsequently you were again issued a Page 11 counseling concerning deficiencies in your performance and/or conduct.

On 21 October 2005, following your deployment in support of Operation Iraqi Freedom, you were issued a third Page 11 counseling concerning an alcohol-related incident. On 8 November 2005, you received a fifth NJP for failure to obey an order by going to █ without an out-of-bounds chit.

On 7 March 2006, you were diagnosed with alcohol dependence and post traumatic stress disorder (PTSD). On 10 March 2006 you were again issued a page 11 counseling concerning deficiencies in your performance and/or conduct.

Consequently, you were notified of pending administrative separation processing with an Other Than Honorable (OTH) discharge by reason of misconduct – pattern of misconduct. You consulted with counsel and elected an administrative discharge board (ADB). The ADB found that you had committed misconduct and recommended that you be discharged under OTH conditions by reason of misconduct – pattern of misconduct. The separation authority concurred with the ADB and, on 25 July 2006, you were so discharged.

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 Memo. These included, but were not limited to, your desire to change your discharge characterization of service so you can seek Department of Veterans Affairs treatment, and your contentions that you were involved in an explosion in Iraq and suffer from associated mental health problems. For purposes of clemency and equity consideration, the Board considered the documents you provided related to post-service accomplishments including your Certificate of Completion for Fiber Optics Installation, in addition to your letter of support from a fellow Marine, your VA Statement in Support of your claim, and medical documentation.

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 10 May 2024. The AO noted in pertinent part:

There is evidence of a diagnosis of PTSD during military service. Unfortunately, available records are not sufficiently detailed to establish a nexus with his misconduct, given alcohol use behavior prior to his combat deployment that continued upon his return. Problematic alcohol use is incompatible with military readiness and discipline and does not remove responsibility for behavior. 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 of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD."

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 likely negative impact your repeated misconduct had on the good order and discipline of your command. Further, the Board noted that you were given multiple opportunities to address your conduct issues but you continued to commit misconduct, which ultimately led to your undesirable discharge. Additionally, the Board concurred with the AO and determined that there was no evidence of a diagnosis of PTSD while you were in the service. The Board agreed that the available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct, and that additional records (e.g., post-service mental health records describing your diagnosis, symptoms, and their specific link to your misconduct) may aid in rendering an alternate opinion. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits or enhancing educational or employment opportunities.

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 you for 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,

8/5/2024

