



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. 10729-23
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 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 28 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 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, 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)/mental health condition (MHC) (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, dated 14 May 2024. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Marine Corps and began a period of active duty on 13 December 2004. On 18 October 2005, you were counseled concerning underage drinking and advised that failure to take corrective action may result in administrative separation. On 31 October 2007, you received nonjudicial punishment (NJP) for a period of unauthorized absence (UA) from appointed place of duty and willful disobedience of a lawful order. On 19 November 2007, you received a second NJP for two instances of willful disobeying a direct order, and disrespectful language. You were

again counseled concerning violations to UCMJ articles 91 and 92. You were advised that failure to take corrective action could result in administrative separation.

On 17 January 2008, you received a third NJP for two instances disobeying a lawful order and driving under the influence. You were again counseled concerning NJP violations to UCMJ articles 92 and 111. Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to pattern of misconduct and you decided to waive your procedural rights. The commanding officer (CO) █ and █ recommended that you were administrative separated from the Marine Corps with an Other Than Honorable (OTH) discharge characterization of service. On 14 April 2008, the CO █ recommended an OTH discharge characterization by reason of misconduct due to pattern of misconduct. On 9 May 2008, your administrative separation proceedings were determined to be sufficient in law and fact. On 19 May 2008, the separation authority approved and ordered an OTH discharge characterization by reason of misconduct due to pattern of misconduct. On 23 May 2008, 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 Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that you were discharged due to a DUI and you reported issues related to mental health, anxiety, mood disorder, personality disorder, antisocial disorder, and alcohol dependency while in service. For purposes of clemency and equity consideration, the Board noted you submitted copies of a letter from your medical provider, military medical records, and four character letters of support.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His mental health 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. Although available service medical records do not provide information regarding a diagnosis of PTSD, the Petitioner did receive formal counseling regarding the diagnosis. Post-service, the Petitioner has received treatment for PTSD and another mental health condition. However, his misconduct appears to be consistent with his problematic alcohol use and personality disorder, rather than evidence of PTSD or another mental health concern incurred in or exacerbated by military service. More weight has been given to the early history of problematic alcohol use and injurious behavior over a purported traumatic precipitant. 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. There is insufficient evidence to attribute his misconduct to a mental health condition other than personality disorder."

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, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. The Board noted that you were given multiple opportunities to correct your deficiencies but continued to commit misconduct. Further, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD. As explained in the AO, your misconduct appears to be consistent with your problematic alcohol use and personality disorder, rather than evidence of PTSD or another mental health concern incurred in or exacerbated by military service. Finally, the Board noted you were not discharged based solely on your DUI offense but based on the pattern of misconduct you committed over your entire military career.

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 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,

7/17/2024

