



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. 0274-24
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 8 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 3 August 1983. On 8 March 1984, 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 issued another Page 11 counseling concerning deficiencies in your performance and/or conduct, on 11 April 1984, and again advised that any further deficiencies in your performance and/or conduct may result in disciplinary action and in processing for administrative discharge. On 15 May 1984, you were found guilty at Summary Court Martial (SCM) of failure to go to your appointed place of duty at the time prescribed and willful damage to government property. On 18 May 1984, were issued another 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 30 May 1984, you were issued a Page 11 counseling for driving without a license and speeding and advised that your driving privilege had been suspended for six months.

On 6 March 1985, you received non-judicial punishment (NJP) for wrongful possession and consumption of alcohol in the barracks. On 12 March 1985, you were issued Page 11 counseling for wrongful appropriation of government property. On 21 November 1985, you received NJP for two specifications of failure to obey a lawful order by possessing and consuming alcohol in the barracks and for having an unauthorized female in the barracks. On 27 December 1985, you received NJP for two hours of UA.

Consequently, you were notified of pending administrative separation processing with an Under Other Than Honorable conditions (OTH) discharge by reason of misconduct due to minor disciplinary infractions. 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 subsequently directed your discharge with an OTH characterization of service and you were so discharged on 5 February 1986.

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 change your discharge characterization of service and your contentions that the punishment was too harsh, affected your employment opportunities, and your character of service is not reflected properly by your discharge status. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application but noted you did not provide documentation describing post-service accomplishments or advocacy letters.

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 24 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.

Petitioner submitted December 2023 records of hospitalization, primarily for medical concerns, but with a secondary diagnosis of Chronic Pain Syndrome noted.

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. His provided medical evidence is temporally remote to his military service and appears unrelated.

The AO 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and SCM, 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. The Board noted that your commanding officer indicated: “Though minor in nature, his frequent commission of disciplinary infractions is unacceptable and detrimental to the morale of this unit and inconsistent with discipline standards of the Marine Corps.” The Board also noted that you were given multiple opportunities to address your conduct issues, but you continued to commit misconduct, which ultimately led to your discharge for repeated minor disciplinary infractions. Additionally, 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. Finally, the Board concurred with the AO and determined that there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service and insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As explained in the AO, the medical evidence you provided is temporally remote to your military service and appears unrelated.

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 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,

7/23/2024

