



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490

██████████
Docket No. 728-24
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 31 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, 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). In addition, the Board considered an advisory opinion (AO) from a qualified mental health professional. Although you were provided an opportunity to respond to the AO, you chose not to do so.

You enlisted in the U.S. Marine Corps and began a period of active duty on 2 October 1979. On 24 February 1981, you received non-judicial punishment (NJP) for being disrespectful in language to a sergeant. You received your second NJP, on 7 August 1981, for violation of a general regulation. Then, on 15 September 1981, you received your third NJP for again being disrespectful in language to a sergeant. On 28 October 1981, you were issued a counseling warning due to your unsatisfactory attitude and lack of judgement. On 25 November 1981, you received your fourth NJP, for failure to obey a lawful order. On 4 December 1981, you were

found guilty at summary court-martial (SCM), for failure to go to your appointed place of duty, failure to obey a lawful order, wrongfully appropriating an armed forces liberty pass that was the property of another Marine, and breaking restriction.

On 9 December 1981, you received your fifth NJP for sleeping on your post. You were issued a counseling warning, on 15 December 1981, for missing your restriction muster and attempting to cover it up. On 23 December 1981, you received your sixth NJP, for three specifications of wrongfully and unlawfully using and possessing marijuana. Subsequently, you received your second SCM, for three specifications for failing to go to restriction muster and being disrespectful in language towards a petty officer. As a result, the Commanding Officer (CO) notified you of administrative separation processing and you elected your right to a hearing before an administrative discharge board (ADB). While awaiting your ADB, you received your seventh and eighth NJPs for failure to obey a lawful order, disrespectful in language to a sergeant, and three hours UA. The CO re-notified you for separation and you waived your associated rights. The CO made his recommendation to the Separation Authority (SA) that you be discharged with an Other Than Honorable (OTH) characterization. The SA accepted the recommendation and directed you be discharged for frequent involvement. You were so discharged on 7 May 1982.

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 had a tough time being away from home and being out to sea for long periods of time, you needed help badly and spoke out in a bad way, were told by your superiors to suck it up, and you cried out and were punished instead of being provided the help you needed. For purposes of clemency and equity consideration, the Board noted you provided a personal statement and your DD Form 214.

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 5 June 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, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly given the chronic and repetitive nature of his misconduct. 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 a mental health condition that may be attributed to military service. There is insufficient evidence to attribute his misconduct 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 SCMs, 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 and determined there is insufficient evidence to attribute his misconduct to a mental health condition. As explained in the AO, you provided no medical evidence to support your claims and available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct, particularly given the chronic and repetitive nature of your misconduct. Additionally, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your separation with an OTH. Finally, the Board noted you were given multiple opportunities to correct your conduct deficiencies but chose to continue to commit misconduct.

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. 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. 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,

8/13/2024

