



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. 0985-24
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 9 September 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). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an advisory opinion (AO). Although you were afforded an opportunity to submit a rebuttal, 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 on the evidence of record.

You enlisted in the U.S. Marine Corps and began a period of active duty on 8 August 1995. On 15 August 1997, you were charged with unauthorized absence (UA) totaling 367 days and ending in your apprehension. Subsequently, you submitted a request for an Other Than

Honorable (OTH) separation in lieu of trial by court martial (SILT) after consulting with counsel. Ultimately, your SILT request was approved and, on 9 October 1997, 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 to have your discharge overturned and your contentions that: (1) you incurred PTSD in service and would like your discharge upgraded to receive proper medical treatment, (2) you witnessed a fellow Marine being assaulted by a Sergeant during boot camp and were instructed to remain silent to protect the Sergeant's retirement benefits. Multiple suicides occurred during boot camp, (3) due to overcrowding, you lived in a fellow Marine's car for 1–2 weeks, (4) your frustrations culminated in an altercation where you shoved another Marine who was slacking and confronted a Staff Sergeant, leading to a visit with the Chaplain, who declined assistance due to “no religious preference” in your file, (5) despite being identified as a flight risk, you were sent home on leave for 10 days, (6) you returned despite your father undergoing a kidney transplant, (7) several Marines went AWOL or used marijuana to secure discharge due to extreme training conditions, (8) during a live training mission, a round misfired, blinding and deafening a Marine on one side, (9) you were alienated from your Platoon and Company, assigned to the Navy, and subsequently harassed by fellow Marines, resulting in further conflicts, (10) although you considered surrendering, you were apprehended, assaulted by █ police, and threatened by military representatives, (11) in the brig, you were placed in a maximum-security cell under harsh conditions, assaulted, denied sunlight for a month, and threatened against reporting any issues, (12) upon release, you were pressured to remain silent and sign documents without understanding their contents, under the promise of a quick discharge, and (13) “I have also attached letters stating evidence that █ knew of and was involved in several of my situations.” For the purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 12 July 2024. The AO stated in pertinent part:

The Petitioner submitted two blank counseling sheets from █ Country Mental Health dated July 1997. He submitted a letter from a Masters level therapist at █” dated August 1, 2023 indicating participation of 28 counseling sessions. The therapist further noted that he diagnosed the Petitioner with Depression, Anxiety and traumatic experiences from the military. 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. Neither his statement nor the letter from █ are 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 a 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 your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your 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. The Board also 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. Further, the Board concurred with the AO that there is insufficient evidence of a mental health diagnosis that could be attributed to military service or your misconduct. 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 noted you provided no evidence, other than your statement, to substantiate your contentions. 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, 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,

10/2/2024

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