



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. 999-24
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 16 August 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider. Although you were provided an opportunity to submit an AO rebuttal for consideration, you chose not to do so.

You originally enlisted in the U.S. Marine Corps and began a period of active duty service on 6 January 1981. Your pre-enlistment physical examination, on 17 November 1980, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 8 March 1982, your command issued you a “Page 11” counseling warning (Page 11) concerning your responsibility to obey lawful order of seniors, and to be at your appointed place of duty at the appointed time. The Page 11 advised you that any future occurrences of this nature could lead to disciplinary action.

On 9 March 1982, your command issued you a Page 11 documenting your conduct in the barracks. The Page 11 advised you that any further incidents could lead to punishment under the Uniform Code of Military Justice.

On 15 March 1982, you received non-judicial punishment (NJP) for dereliction in the performance of duties. You appealed your NJP but higher authority denied your appeal on 26 March 1982.

On 5 May 1983, you received NJP for: (a) unauthorized absence (UA), (b) two separate specifications of insubordinate conduct, (c) wrongfully communicating a threat, and (d) the wrongful use of a controlled substance (marijuana). You did not appeal your NJP.

On 20 May 1983, your command issued you a Page 11 documenting your misconduct as reflected in your service record. The Page 11 advised you that a failure to take corrective action may result in administrative separation proceedings. On 31 May 1983, your command issued you a Page 11 documenting your failure to obey orders and a failure to be at your appointed place of duty.

On 1 June 1983, you commenced a UA that terminated on 7 June 1983. On 7 July 1983, you received NJP for two separate UA specifications, one of which included your 6-day UA. You did not appeal your UA. On 7 July 1983, your command issued you a Page 11 documenting your three (3) NJPs.

On 12 July 1983, your command notified you that you were being processed for an administrative discharge by reason of misconduct due to a pattern of misconduct. You did not consult with counsel, and you initially elected your right to request a hearing before an administrative separation board.

Your separation physical examination, on 17 October 1983, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms. On 21 October 1983, you subsequently waived in writing your right to request an administrative separation board. Ultimately, on 8 November 1983, you were discharged from the Marine Corps for misconduct with an under Other Than Honorable conditions (OTH) characterization of service and were assigned an RE-4 reentry code.

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 change to your narrative reason for separation. You contend that: (a) you were abused by your superior in Japan, (b) you were hospitalized and experienced some severe mental distress which manifested in mental illness, which lead to a series of events underlying your discharge, (c) post-

service you have led a productive life and sought to help those in need, (d) you are currently suffering from Alzheimer's disease (2023 diagnosis) and hope to reconcile your military record. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

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 1 July 2024. The Ph.D. stated in pertinent part:

Petitioner claims that he was experiencing mental distress. Unfortunately, he has provided no medical evidence to support his claims. While assault and harassment can contribute to mental health concerns, it is difficult to attribute misconduct over the course of a year solely to mental health symptoms. 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 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 and your contentions were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence of any nexus between any mental health conditions and/or related symptoms and your cumulative misconduct and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to any mental health-related conditions or symptoms. Moreover, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your pattern of misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not be held accountable for your actions.

The Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that an OTH characterization is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine. Moreover, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating certain veteran's benefits (including medical benefits), or enhancing educational or employment opportunities.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order in discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation and empathizes with you for your current medical condition, 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,

8/22/2024

