



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. 1189-24
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 29 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 and your response to the AO.

You enlisted in the Marine Corps and commenced active duty on 4 August 1981. You received a waiver for pre-service misconduct, including driving while intoxicated and uttering a worthless check. On 6 August 1981, you were issued an administrative remarks (Page 11) counseling for fraudulent enlistment regarding your pre-service police record, and you were granted another waiver on 14 September 1981.

On 11 October 1983, you commenced a period of unauthorized absence (UA), during which you were declared a deserter, that ended when civil authorities returned you to military control on 18 October 1991.

Unfortunately, the documents pertinent to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), you were separated on 15 January 1992 with an “Under Other Than Honorable Conditions (OTH)” characterization of service, your narrative reason for separation is “Conduct Triable by Court Martial,” your reentry code is “RE-4,” and your separation code is “KFS1,” which corresponds to conduct triable by courts-martial (request for discharge for good of the service).

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 your misconduct is mitigated by undiagnosed mental health issues that occurred after your mother passed away on 30 October 1982. For purposes of clemency and equity consideration, the Board noted the medical and psychiatric notes, and advocacy statements you provided.

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 15 July 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 contributed to the circumstances of his separation.

Petitioner contended that personal stressors, including the death of his mother contributed to mental health concerns and his misconduct in service. He provided evidence of her death in October 1982. He submitted a December 2023 letter from his civilian provider since January 2018, listing mental health diagnoses of PTSD, depression, anxiety, and insomnia, attributed to the Petitioner’s military service in Japan in 1982. He provided evidence of treatment of medical and mental health concerns from July to December 2023. He submitted statements of support from military buddies.

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. Temporally remote to his military service, a civilian provider has listed diagnoses of PTSD and other mental health concerns that are attributed to his military service. Unfortunately,

available records are not sufficiently detailed to establish a nexus with his misconduct, particularly given his extended absence from service.

The AO concluded, “it is my clinical opinion there is post-service evidence from a civilian provider of diagnoses of PTSD and other mental health conditions that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition.”

In response to the AO, you supplied additional documentation to clarify the circumstances of your case. After reviewing your rebuttal evidence, the AO remained unchanged.

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 long-term UA and separation in lieu of trial by court-martial, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact your conduct had on the good order and discipline of your command. The Board noted that you were declared a deserter and remained UA for just over eight years, offenses that likely would have resulted in a punitive discharge at 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. Finally, the Board concurred with the AO that, while there is post-service evidence from a civilian provider of diagnoses of PTSD and other mental health conditions that may be attributed to military service, there is insufficient evidence to attribute your misconduct to PTSD or another mental health condition. As explained in the AO, there was insufficient evidence you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition.

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,

8/21/2024

