



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. 1346-24

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 6 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). Additionally, the Board also considered an advisory opinion (AO) furnished by qualified mental health provider. Although you were afforded 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 12 June 2001. Your pre-enlistment physical examination, on 12 June 2000, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms, or any mental health history or counseling.

On 21 January 2002, you commenced an unauthorized absence (UA) that terminated on 24 January 2002. On 25 January 2002, you received non-judicial punishment (NJP) for your

three-day UA, and for failing to obey a lawful order. A portion of your NJP was suspended for six (6) months. You did not appeal your NJP.

On 9 August 2002, your command issued you a “Page 11” retention warning (Page 11) documenting that you were eligible, but not recommended for promotion to Private First Class (E-2) because of “weight control.” You did not elect to submit a rebuttal statement.

On 1 July 2003, your command issued you a Page 11 documenting that you were eligible, but not recommended for promotion to Private First Class (E-2) due to failing the physical fitness test (PFT). You did not elect to submit a rebuttal statement.

On 10 September 2003, your command issued you a Page 11 documenting that you were eligible, but not recommended for promotion to Private First Class (E-2) due to “PFT Failure, Overweight.” You did not elect to submit a rebuttal statement.

On 11 May 2005, your command issued you another Page 11 wherein you acknowledged that you would be receiving an “RE-3P” reentry code due to your failure to maintain Marine Corps height and weight standards. A second Page 11, issued to you the same day, documented that you would be receiving a General (Under Honorable Conditions) (GEN) discharge characterization due to your conduct trait average being below a 4.0 average. You did not submit a rebuttal statement. Upon the completion of your required active service, on 14 June 2005, you were discharged from the Marine Corps with a GEN characterization of service and assigned an RE-3P reenlistment/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 restoration of your rank to E-4. You contend that: (a) you were bullied both at your duty station and during OIF, (b) your character was constantly questioned and you were called out amongst your peers as a malingerer which gave you PTSD during your service and which you are rated 70% for through the VA, (c) you twisted your ankle and severely sprained it during a run early in your enlistment, (d) you were given six months of physical therapy which you never completed because your Platoon Sergeant immediately began publicly shaming you on a daily basis, (e) your ankle never recovered which led to your inability to pass PFT's and get promoted, (f) you were hazed for years and told by your Platoon Sergeant during OIF you would be shot in the back of the head so he could get rid of you, (g) it has taken you this long to submit for a correction due to the PTSD, and it has taken time and counseling to realize the consequences of abuse are not your fault, (h) you have worked at your company for 17 years never receiving any disciplinary action, (i) you have always been a good person honorable person, and (j) you should not be kept from having a “clean” DD-214 that says “Honorable Discharge” nor have to explain why you were separated as only an E-2 when you always held higher billets in your MOS. 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, the a licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records, and issued an AO dated 3 July 2024. The Ph.D. stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. Post-service, the VA has granted service connection for PTSD. Unfortunately, available records are not sufficiently detailed to establish clinical symptoms in service or provide a nexus with his misconduct, particularly as his misconduct occurred prior to his deployment and ankle injury. 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 post-service evidence from the VA of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD."

After thorough review, the Board concluded these potentially mitigating factors 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 cumulative and repetitive 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 outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your 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 observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average calculated from your available performance evaluations during your enlistment was approximately 3.8 in conduct. Marine Corps regulations in place at the time of your discharge recommended a minimum trait average of 4.0 in conduct (proper military behavior), for a fully Honorable characterization of service. The Board concluded that your misconduct was not minor in nature and that your conduct marks during your active duty career were a direct result of your serious misconduct and further justified your GEN characterization.

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 a GEN or under other than honorable conditions (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.

Finally, the Board declined to change or otherwise modify your terminal rank to Corporal (E-4), up from your rank at discharge of Private First Class (E-2). The Board noted that you were properly reduced in rank at NJP in January 2002 down to the rank of Private (E-1), and that no material error or injustice existed in your record associated with the fact that your terminal rank after four (4) full years of service was only E-2.

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, 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,

9/12/2024

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Executive Director

Signed by: █