



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

█
Docket No. 2198-24

Ref: Signature Date

█
█
█

Dear █

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 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 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional, dated 23 Jul 2024. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the Marine Corps and began a period of active duty on 2 July 1990. On 31 October 1991, you were convicted by special court martial (SPCM) for indecent assault and making a false statement. You were found guilty and sentenced to a Bad Conduct Discharge, reduction in rank, confinement, and forfeiture of pay. On 7 February 1992, your SPCM sentence was approved but a portion of your sentence, including the BCD, was suspended for 12 months.

On 26 May 1992, you began a period of unauthorized absence (UA) which lasted seven-days and resulted in nonjudicial punishment (NJP) on 4 June 1992. On 19 November 1992, you were counseled concerning the following offenses: incidents prejudicial to good order and discipline to wit SPCM charges, previous NJP, not recommended for promotion, driving without a driver's license while on base and failing to appear for traffic court. You were advised that failure to take corrective action could result in administrative separation.

On 10 January 1993, you were arrested by civil authorities for speeding and past due registration. You were also in possession of marijuana, cocaine, and weapons at the time of your arrest. Consequently, you were notified of the initiation of administrative separation proceedings by reason of misconduct due to commission of a serious offense, at which point, you decided to waive your procedural rights. In the meantime, you received a second NJP for two periods of UA from appointed place of duty, violation of a lawful order, and intent to deceive. Subsequently, your commanding officer recommended and Other Than Honorable (OTH) discharge characterization of service by reason of misconduct due to commission of a serious offense. After your administrative separation proceedings were determined to be sufficient in law and fact, the separation authority approved the recommendation and, on 12 April 1993, 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 for a discharge upgrade and contentions that: (a) you endured a back and knee injury, developed PTSD and a hernia, (b) you developed PTSD, which caused your behavior to intensify, (c) you were acting out because you could not communicate your feelings of anxiety, anger, detachment, and numbness, (d) you witnessed someone getting seriously injured and have developed recurrent intrusive daily thoughts regarding this traumatic event, (e) you sought to self-treat with marijuana to alleviate the symptoms, (f) you were not discharged as a result of a court martial or any other legal proceedings, (g) you have been able to maintain consistent employment and have retained multiple certifications over your tenure. For purposes of clemency and equity consideration, the Board noted you provided copies of your medical documentation, three certificates of completion, and a letter of recommendation.

As part of the Board's review, the Board considered the AO. The AO stated in pertinent part:

Petitioner submitted evidence of post-service medical complaints.

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. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with 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 AO concluded, "it is my clinical opinion there is insufficient evidence 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. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and SPCM conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. Additionally, the Board considered the likely discrediting effect your civil arrest had on the Marine Corps. Further, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD or a mental health condition. As explained in the AO, you provided no medical evidence in support of your claims and your personal statement is not sufficiently detailed to establish clinical symptoms in service or provide a nexus with your misconduct. Finally, the Board determined you already received a large measure of clemency when your BCD was suspended. Despite being given an opportunity to correct your conduct deficiencies, you 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 characterization. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments, 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 the 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,

10/4/2024

