



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

██████████
Docket No. 2200-24
Ref: Signature Date

████████████████████
████████████████
████████████████

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 11 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). In addition, the Board considered an advisory opinion (AO) from a qualified mental health professional. Although you were provided an opportunity to respond to the AO, 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 based on the evidence of record.

You enlisted in the U.S. Marine Corps and began a period of active duty on 10 August 1992. On 9 March 1993, you were issued a counseling warning for your failure to obey grooming

regulations after being previously counseled. On 17 November 1993, you were notified that your driving privileges onboard every DoD installation are suspended until 20 October 1995. On 14 February 1994, you were found guilty at summary court-martial (SCM) for operating a passenger car while drunk and operating passenger car in a reckless manner. You were sentenced to reduction in rank, restriction with extra duties and forfeiture of pay.

On 25 January 1995, you were arrested by civilian authorities for multiple assaults with a firearm, harboring, concealing, and aiding another with the intent that might avoid and escape arrest, and willfully, unlawfully, and maliciously defacing with paint and liquid, damage and destroy real personal property. Consequently, the Commanding Officer (CO) notified you for administrative separation for misconduct commission of a serious offense and you elected to have an administrative discharge board (ADB) hear your case. On 9 June 1995, the ADB found misconduct and recommended you be separated with a General (Under Honorable Conditions) (GEN) characterization of service. The Separation Authority accepted the ADB's recommendation and directed you be discharged. Ultimately, you were discharged on 11 August 1995 with a GEN.

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 contention that you were diagnosed with PTSD in 1995, you could not see the injury, and you did not believe one existed. For purposes of clemency and equity consideration, the Board noted you provided a personal statement, a certificate, and three advocacy letters.

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

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. His statement is not sufficiently detailed to provide a nexus with his misconduct. The records for the ██████████ Department of Corrections do not note any cause of his diagnoses as being related to his time in service. Furthermore, the nature and severity of his misconduct is more likely due to characterological diagnoses rather than mental health diagnoses. 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 Ph.D. concluded, "it is my considered clinical opinion there is sufficient evidence of post-service mental health conditions that are temporally remote to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

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 SCM and civil arrest, 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. Furthermore, the Board considered the discrediting effect your civil arrest had on the Marine Corps. Further, the Board concurred with the AO and determined there insufficient evidence that his misconduct could be attributed to a mental health condition. As explained in the AO, the nature and severity of your misconduct is more likely due to characterological diagnoses rather than mental health diagnoses. Therefore, the Board concluded that your discharge was proper and equitable under standards of law and discipline and that the discharge accurately reflects your conduct during your period of service, which was terminated by your separation with a GEN.

As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN. While the Board carefully considered the evidence you submitted in mitigation and commends you for your post-discharge accomplishments and rehabilitation, 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,

9/24/2024

