



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. 2339-24
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 October 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. Although you were afforded an opportunity to submit an AO rebuttal, 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 Marine Corps Reserve and began a period of active duty for training on 21 May 1991. On 20 December 1991, you received an Honorable characterization for your period of active-duty service and transferred to your Reserve unit. During the period from 19 March 1993 to 6 March 1994, you were issued fifteen administrative remarks (Page 11) counseling's

concerning your unsatisfactory drill participation. After your counseling, you continued your unsatisfactory participation in drills.

Consequently, you were notified that you were being recommended for administrative discharge from the Marine Corps Reserve by reason of unsatisfactory participation in the ready reserve as evidence by your unexcused absence from drill participation from 3 April 1993 through 3 October 1993. On 14 November 1993, an attempt of personal service of the notification of separation proceedings was made to your residence by the military police with no response. The notification advised that if separation was approved, the least favorable description of service authorized in your case would be under Other Than Honorable (OTH) conditions. The notification further advised you of your right to consult with military counsel and your right to request a hearing before an administrative discharge board. By failing to respond you waived the foregoing rights. The commanding officer forwarded your administrative separation package to the separation authority recommending your administrative discharge with an Other Than Honorable (OTH) characterization of service. The separation authority approved the recommendation, and on 24 March 1994, 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 to upgrade your discharge character of service and contentions that: (1) you regret your decisions, (2) you suffered from mental illness, depression and anxiety, (3) you were having family issues, and (4) you have finally received treatment; therefore, your thoughts are clear. For purposes of clemency and equity consideration, the Board considered your statement and the documentation you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on 26 July 2024. The AO 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. 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 AO concluded, "it is my considered clinical opinion there is insufficient evidence of a mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a mental health condition."

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 unsatisfactory participation in drills, outweighed these mitigating factors. In making this finding, the Board the Board considered the seriousness of your misconduct and found that your conduct

showed a complete disregard for military authority and regulations. The Board also considered the likely negative impact your conduct had on the good order and discipline of your unit. Further, the Board concurred with the AO that there is insufficient evidence of a mental health condition that may be attributed to military service and there is insufficient evidence that your misconduct could be attributed to a mental health condition. As the AO explained, your statement is not sufficiently detailed to provide a nexus with your misconduct and there is no evidence that you were diagnosed with a mental health condition while in military service, or that you exhibited any symptoms of a mental health condition. Therefore, the Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. Finally, the Board noted you were given multiple opportunities to correct your conduct deficiencies and 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 commends you for your post-discharge accomplishments and 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,

11/7/2024

