



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

██████████
Docket No. 2400-24
Ref: Signature Date

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

Dear Petitioner:

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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session on 23 August 2024, has carefully examined your current request. 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, and applicable statutes, regulations, and policies, to include to the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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) of a qualified mental health provider and your response to the AO.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You previously applied to this Board twice for a discharge upgrade. The summary of your active duty service in the Marine Corps remains substantially unchanged from that addressed in the Board's initial review as well as its most recent reconsideration of your record, to include your

receipt of a Bad Conduct Discharge from your conviction by Special Court-Martial (SPCM) for knowingly and unlawfully using another person's identification to access and steal money from another Marines credit union account, conspiracy to commit larceny, and three offenses of larceny from other Marines.

As noted in the most recent review of your record, you also previously applied to the Naval Discharge Review Board (NDRB) contending that you did not commit the violations to which you pleaded guilty and asserting that your post-service conduct merited consideration on the basis of clemency. Your request was considered on 5 November 2013 and denied.

You initially applied to the Board contending multiple allegations of error or injustice with respect to procedural aspects of your SPCM and factual assertions which you believe tended to negate or mitigate your guilt with respect to the offenses. You also asserted that your post-service conduct merited consideration on the basis of clemency. The Board considered and denied your request on 31 January 2017.

In your first request for reconsideration you again asserted your belief that your post-discharge character warranted consideration of multiple clemency factors because you had made full restitution for your offenses, no one was physically injured, you readily cooperated with the criminal investigation, your misconduct was an isolated incident, you accepted responsibility and pleaded guilty, it had occurred over 14 years previously, you were very young at the time, and you have since become a highly respected senior federal employee who volunteers within your community. You also submitted additional arguments regarding the propriety of your pre-trial agreement and guilty plea, to include your belief that your rights were violated by not being given an opportunity to submit clemency matters for consideration and due to the military judge commenting on the apparent lack of consideration afforded in your pre-trial agreement. The Board considered and denied your request on 28 April 2023; although it granted a concurrent request to change your name.

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 and your contentions that you were experiencing the early behaviors and symptoms of an undiagnosed bipolar disorder, which you believed resulted in mental incompetency and contributed to your in-service misconduct due to lack of proper diagnosis and treatment at that time. You also believe that your evidence of post-service character, previously considered for purposes of a potential grant of clemency, reflects the quality of your character when your mental health condition is properly treated. For purposes of clemency and equity consideration, you submitted your previous requests with a new brief from your legal counsel in addition to new medical records documenting the diagnosis and treatment of your mental health condition.

Because you contend in part that PTSD or another mental health condition affected the circumstances of the misconduct which resulted in your discharge, the Board considered the AO. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service. Post-service, he has been diagnosed with a mental health condition that a civilian psychiatrist has attributed to military service. It is possible

that disobedience and insubordination could be considered behavioral indicators of undiagnosed or prodromal symptoms of Bipolar Disorder. However, it is difficult to attribute his actions of larceny and conspiracy to a mental health condition. His statements that he was initially unaware of the thefts and worked for restitution once he learned of them are inconsistent with symptoms of grandiosity or recklessness that could be suggestive of a manic state. 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 post-service evidence from a civilian provider of a mental health condition that may be attributed to military service. There is insufficient evidence to attribute all of his misconduct to a mental health condition."

You submitted a rebuttal to this AO with a response from your civilian psychiatrist who asserted that your illegal actions during military service were the result of your disabling, undiagnosed, and untreated psychiatric condition, which resulted in a "psychotic lack of judgment" and "would have rendered [you] unable to distinguish which of [your] actions were legal or illegal or which were morally right or wrong." You again asserted that you believe your request warrants relief on the basis of the policies set out the Kurta and Wilke memoranda with respect to liberal consideration and the assessment of clemency. The Board's medical advisor reviewed your rebuttal to the AO, to include the additional statement from your civilian psychiatrist and the additional evidence of your treatment described during the initial evaluation. However, since this evidence did not provide new or materially different information than what was previously provided, the AO remained unchanged.

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, 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. Additionally, the Board strongly concurred with the assessment in the AO regarding the lack of nexus between your actions of larceny and conspiracy and your contended mental health condition, even if you were suffering early prodromal symptoms of undiagnosed Bipolar Disorder. Whereas the assessments you have submitted via your civilian psychiatrist assert that you were unable to distinguish between actions which were legal or illegal or which were morally right or wrong, the record does not support this opinion. The record reflects that you have claimed to have initially been innocent of the offenses, or to at least have been initially unaware of the thefts, but then agreed to work for restitution; which the Board's mental health advisor found to be inconsistent with the symptoms of grandiosity or recklessness that could be suggestive of the type of manic state and support your contentions of experiencing a "psychotic lack of judgment." 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 not be held accountable for your actions.

Furthermore, the Board found that the severity of your criminal actions was substantially more serious than you have presented over the course of your various requests for review. Specifically, the Board rejected your previous argument that your misconduct was an isolated event in light of your two nonjudicial punishment actions for five separate offenses. Additionally, the Board noted that, prior to your negotiation of your larceny charges from a

