



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

Docket No. 2443-24
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 9 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.

You enlisted in the Marine Corps and began a period of active duty on 17 May 1978. On 1 November 1979, you received non-judicial punishment (NJP) for disrespect toward a superior commissioned officer by failing to execute the customary salute while in his presence. On 26 March 1980, you were convicted by a special court-martial (SPCM) of conspiracy and larceny. As punishment, you were sentenced to confinement, forfeiture of pay and reduction in rank. On 19 February 1981, you were issued an administrative remarks (Page 11) counseling concerning your poor attitude and unsatisfactory behavior. On 28 May 1981, you were convicted by SPCM of two specifications of unauthorized absence (UA) totaling 14 days. As punishment, you were sentenced to confinement and reduction in rank. In June 1981, you were

charged and subsequently convicted by civilian authorities of rape and willfully, unlawfully, and forcibly stealing, taking, and arresting a female civilian.

Consequently, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of misconduct due to civilian conviction. You conferred with military counsel at which time you were advised of your right to request an administrative discharge board (ADB) and your right to make a statement to the discharge authority. After consulting with counsel, you waived the forgoing rights. Ultimately, the separation authority directed your OTH discharge from the Marine Corps by reason of misconduct due to civilian conviction and, on 29 September 1982, 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 you were denied your due process rights and your mental health symptoms stemmed from your exposure to the toxic chemicals at Camp Lejeune during your military service. For purposes of clemency and equity consideration, the Board considered your statements and the supporting 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 14 August 2024. The AO stated in pertinent part:

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. Temporally remote to his military service, he has received some mental health diagnoses that he has attributed to chemical exposure in service but that his providers have refrained from assigning causation. Unfortunately, available records do not provide a nexus with his misconduct, particularly given pre-service behavior that appears to have continued in service.

The AO concluded, "it is my clinical opinion there is insufficient evidence of diagnoses of PTSD or other mental health concerns that may be attributed to military service. There is insufficient evidence to attribute his misconduct to PTSD or another 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 civilian conviction, NJP, and SPCM convictions, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. The Board also considered the negative impact your conduct likely had on the good order and discipline of your unit and the discrediting nature of your civilian conviction. Further, the Board concurred with the AO that there is insufficient evidence of diagnoses of PTSD or other mental health concerns that may be attributed to military service and there is insufficient evidence to attribute your

misconduct to PTSD or another mental health condition. As the AO explained, throughout your disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation and there is no evidence that you were diagnosed with a mental health condition in military service, or that you exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Additionally, the available records do not provide a nexus with your misconduct, particularly given your pre-service behavior that appears to have continued in service. 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. The Board found that your misconduct was intentional and made you unsuitable for continued naval service. Finally, regarding your contention about your due process rights, the record does not support your allegation. You were provided legal counsel, informed and advised of your rights, and voluntarily waived your right to an ADB; thereby forfeiting your best opportunity to receive a better characterization of service. Consequently, the Board was not persuaded by your contention.

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 your statements and 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.

Regarding your assertion concerning Camp Lejeune, Public Law 112-154, Honoring America's Veterans and Caring for Camp Lejeune Families Act of 2012, requires the Veterans Administration to provide health care to Veterans with one or more of 15 specified illnesses or conditions. You should contact the nearest office of the Department of Veterans Affairs (VA) concerning your right to apply for benefits or appeal an earlier unfavorable determination.

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,

11/4/2024

