



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. 2522-24
Ref: Signature Date

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Dear █

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 13 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 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). Additionally, the Board also considered an advisory opinion (AO) furnished by a qualified mental health provider and your AO rebuttal submission.

You enlisted in the U.S. Marine Corps and began a period of active duty service on 30 May 1979. Your pre-enlistment physical examination, on 22 May 1979, and self-reported medical history both noted no psychiatric or neurologic issues or symptoms. On or about 18 February 1981, you extended your four-year enlistment for an additional twelve (12) months.

On 10 March 1983, pursuant to your guilty pleas, you were convicted at a Special Court-Martial (SPCM) of two (2) separate specifications of failing to obey a lawful general regulation involving the wrongful possession of marijuana, and two (2) two separate specifications of failing to obey a lawful general regulation involving the wrongful sale of marijuana, one instance of which occurred on board a military installation. The Military Judge sentenced you to confinement at hard labor for five (5) months, forfeitures of pay, a reduction in rank to the lowest enlisted paygrade (E-1), and a discharge from the Marine Corps with a Bad Conduct Discharge (BCD). On 27 April 1983 the Convening Authority (CA) approved the SPCM sentence as adjudged, except suspended any confinement in excess of forty-five (45) days and forfeitures in excess of three (3) months.

On 8 August 1983 you waived your right to departmental-level clemency review by the Naval Clemency and Parole Board. On 1 September 1983, the General Court-Martial Convening Authority approved the SPCM sentence as approved and partially suspended by the CA. On both 27 April 1983 and 22 September 1983, your discharge physical examination and separation physical examination, respectively, noted no psychiatric or neurologic conditions or symptoms.

On 7 December 1983, the U.S. Navy-Marine Corps Court of Military Review affirmed the SPCM findings and sentence as approved by the CA. On 4 April 1984, the U.S. Court of Military Appeals denied your petition for a grant of review. Ultimately, upon the completion of appellate review in your SPCM case, you were discharged from the Marine Corps with a BCD and assigned a RE-4 reentry code on 24 May 1984.

On 17 May 1994, the Naval Discharge Review Board denied your initial application for discharge upgrade relief. You contended, in part, that you were undergoing extreme stress due to the break-up of your marriage.

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 change to your reason for separation and separation code. You contend that: (a) your chain of command made a material error in discretion by separating you with a BCD, (b) specifically, your command erred by charging you with the distribution and possession of marijuana rather than providing you with the necessary rehabilitative services, (c) but for your command's errors, you would not have been subjected to a SPCM and likely would have received a greater characterization of service, (d) the demands of the Marine Corps played a significant role in the deterioration of your mental and physical well-being, (e) you displayed great difficulty in coping with the emotional and physical distress related to your work environment, however, your command did not give you the reasonable opportunity to cater to your mental health, (f) when you got divorced for his wife and faced struggles of becoming a single father, the stress and grief compounded on you to the extent where you sought illegal means to cope, (g) you clearly suffered from emotional and physical stress from your ex-wife's infidelity, leading to a messy divorce and you having the sole responsibility of raising a child as a single father, all while serving in the Marine Corps, (h) after your pleas for help fell on deaf ears, you resorted to selling marijuana as a way to make extra money to help raise your son, (i) you were provided with no option of counseling and were indirectly forced to illegal means to cope with the demands of the

Marines and becoming a single father, (j) your chain of command erred in their discretion when they chose to discharge you as a struggling single father with the possession and distribution of marijuana rather than providing you with the appropriate rehabilitation services and counseling for your emotional distress, (k) you have suffered from the stigma of your discharge status for nearly forty years, and have had to live with the shame and embarrassment that accompanies an OTH discharge, and (l) you have persevered and created a successful and flourishing life post-service for yourself and those around you despite the negative impact surrounding your discharge status. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application.

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 1 August 2024. The Ph.D. stated in pertinent part:

The Petitioner submitted two statements from former Marines who reportedly served with him during the time of his misconduct. Both corroborate the Petitioner's anecdote. However, 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. There is no evidence that he ever asked for help from his command in regard to his reported depression, nor did he submit any medical evidence in support of his claim. 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 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."

Following a review of your AO rebuttal submission which did not include, any new medical evidence, the Ph.D. did not change or otherwise modify their original AO.

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. In accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, the Board concluded that there was no convincing evidence that you suffered from any type of mental health condition while on active duty, or that any such mental health condition was related to or mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms. Additionally, even if the Board assumed that your misconduct was somehow attributable to any mental health conditions, the Board unequivocally concluded that the severity of your drug-related misconduct far outweighed any and all mitigation offered by such mental health conditions. The Board determined the record reflected that your misconduct was intentional and willful and demonstrated you were unfit for further service. The Board also 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.

The Board disagreed with your contention that you were not solely responsible for the misconduct and the resulting BCD. The Board determined you were single-handedly responsible for your behavior to ensure you conformed to acceptable standards of good order and discipline. Further, the Board was not persuaded by your inference that the Marine Corps made an error of discretion to charge you at a SPCM for drug possession and distribution or that you resorted to criminal activity to earn money to support your son.

The Board also noted that, although it cannot set aside a conviction, it might grant clemency in the form of changing a characterization of discharge, even one awarded by a court-martial. However, the Board concluded that despite your contentions this was not a case warranting any clemency as you were properly convicted at a SPCM of multiple drug-related offenses, including one such offense that occurred on board a military installation.

As a result, the Board determined that there was no impropriety or inequity in your discharge and concluded that your misconduct and disregard for good order and discipline clearly merited your discharge. While the Board 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,

9/25/2024

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