



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

██████████
Docket No. 4382-24
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 25 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 and your response to the AO.

You enlisted in the U.S. Marine Corps and began a period of active duty on 5 April 1978. You subsequently completed this enlistment with an Honorable characterization of service on 22 April 1981, and immediately reenlisted.

On 20 December 1982, you requested a change to your last name, in accordance with an order of the Superior Court of the state of ██████████, due to being the first cousin of the late ██████████. On 7 June 1983, your request was approved by the Marine Corps. On 17 June 1983, the state of ██████████ dismissed the entire action without prejudice to the name change. The

Inspector Instructor, in conjunction with the Immigration and Naturalization Service investigated you for violation of numerous U.S.C. codes, for entry of alien at improper time or place, misrepresentation and concealment of facts, conspiracy to commit an offense, false claim to United States citizenship, false statement or writings, false statement in application and use of U.S. passports, and fraud and related activity in connection with identification documents.

Unfortunately, some documents pertaining to your administrative separation are not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that you were separated from the Marine Corps on 20 March 1984 with an Other than Honorable (OTH) characterization of service, your narrative reason for separation is "Fraudulent entry into the Marine Corps," your separation code is "HDA1," and your reenlistment code is "RE-4."

Post-discharge, you applied to the Naval Discharge Review Board (NDRB) for a discharge upgrade. The NDRB denied your request for an upgrade, on 1 August 1988, based on their determination that your discharge was proper as issued. The NDRB did find an error on your DD Form 214 and directed a DD Form 215 be issued with the correct separation reason.

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 contentions that your discharge was caused by PTSD induced behaviors from service connected events and an enlistment error led to fraudulent discharge label. You contend that these conditions significantly impaired your thought processes and behaviors, leading to actions that were out of character during your second enlistment. Finally, you assert that your discharge prevents hinders approvals of your diagnosed conditions. For purposes of clemency and equity consideration, the Board noted you provided certificate of military service, discharge certificate, medical letter, and headquarters Marine Corps letter.

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 4 September 2024. The Ph.D. 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. Temporally remoted to his military service, civilian providers have diagnosed him with PTSD and other mental health concerns that are attributed to military service. Unfortunately, there is insufficient evidence to attribute his misconduct to mental health concerns incurred during military service, as his separation was due to fraudulent statements upon enlistment.

The Ph.D. concluded, "it is my clinical opinion there is post-service evidence from civilian providers of diagnoses of PTSD and another mental health condition that may be attributed to

military service. There is insufficient evidence attribute his misconduct to PTSD or another mental health condition.”

In response to the AO, you provided a statement that supplied additional clarification of the circumstances of your case. After reviewing your rebuttal evidence, 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 fraudulent enlistment separation, 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. Further, the Board concurred with the AO and determined there is insufficient evidence to attribute his misconduct to PTSD or another mental health condition. As explained in the AO, there is insufficient evidence to attribute your misconduct to mental health concerns incurred during military service, as your separation was due to fraudulent statements upon enlistment. More importantly, despite your claims that your actions were the result of a mental health condition, the Board observed that you admitted to the NDRB that you were not a U.S. citizen at the time of your first enlistment. Therefore, the Board determined you fraudulently enlisted into the Marine Corps and committed your misconduct before incurring any service connected mental health condition. Finally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans’ benefits or enhancing educational or employment opportunities.

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. 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,

10/11/2024

