



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. 5496-24
Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to 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 1 November 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, applicable statutes, regulations, and policies, to include 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)/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). The Board also considered the advisory opinion (AO) provided as part of your previous application to this Board. You were previously provided an opportunity to respond to the AO but chose not to do so.

You previously applied to the Board contending that you suffered mental health issues during your service that impacted your conduct. You also provided documentation related to your post-service accomplishments, a character letter, and a letter from your Congressional representative. Your request was considered on 30 November 2023 and denied in light of the seriousness of your misconduct and the unfavorable AO, with respect to your mental health contentions. The summary of your service is substantially unchanged from that addressed in the Board's previous

decision. Of significant note, however, is that your conviction by General Court-Martial (GCM) involved unlawfully entering the dwelling of another, commission of indecent assault, and false statements under oath.

You now seek reconsideration of your claims of injustice and post-discharge character. The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to upgrade your discharge to "Honorable" and change your narrative reason for separation to "Secretarial Authority." You contend that your discharge was an injustice which has resulted in your being denied jobs, forcing you to overcome significant obstacles over the past 35 years due to the stigma of your characterization of service. Although you continue to claim, in your personal statement, that a psychiatric condition impacted the circumstances of your misconduct, you did not submit any new medical evidence for consideration which might have warranted a new AO. Additionally, although you reference your in-service diagnosis of passive aggressive attitude, that condition is characterological, as addressed in the AO. With respect to your conduct difficulties, you state that you turned to alcohol for answers as a young man when you were struggling with mental health problems and needed family crisis counseling, which you claim you were not afforded time to attend. Finally, you appear to believe that you were awarded the Good Conduct Medal in spite of your conduct issues. For purposes of clemency and equity consideration, you submit three character letters in support of your contentions of post-discharge character and accomplishments, which includes being a well-respected manager of an Exxon chemical plant.

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 non-judicial punishment and GCM, 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 noted that there is no evidence of Good Conduct Medal documented in block 13 of your discharge certificate. Rather, the Board found correspondence in your official military personnel file that your commanding officer specifically requested to deny your pending eligibility for the Good Conduct Medal, and the Commandant of the Marine Corps approved that denial on the basis of your frequent receipt of administrative counseling for misconduct, directing that the 3-year period commencement date for that award would be determined by your commanding officer. Based on the remarks entered into block 18 of your discharge certificate, the commencement date for your 3-year period began 19 February 1991, meaning that you would have needed to serve without conduct infractions until 18 February 1994 in order to earn the Good Conduct Medal.

The Board also considered the character letters you submitted. One of the letters was from your former roommate during your military service which expresses the mistaken belief that you were awarded the Good Conduct Medal, that you were promoted after your conviction, and that you continued to serve at length following your release from confinement. He also states that you would not have left the Marine Corps with an Other Than Honorable discharge but for a misunderstanding and lack of follow-up regarding your paperwork and understanding of the process. However, the Board found your records to wholly contradict these claims. Your GCM conviction in December of 1990 included a reduction to the paygrade of E-2 in addition to eight months of confinement. Although you initially requested a hearing before an administrative separation board, you subsequently elected to waive a hearing after consulting legal counsel.

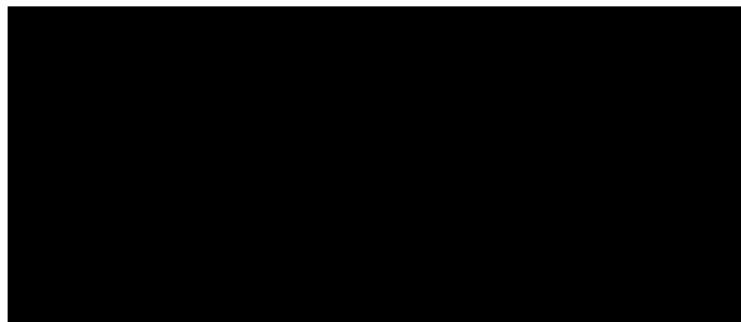
The administrative review and processing of the pending hearing and subsequent waiver delayed your discharge, but only for approximately two months. Additionally, the recommendation for your discharge under Other Than Honorable conditions expressed a desire that you should be discharged soonest upon your release from confinement, and you were in fact discharged by 9 October 1991, in the paygrade of E-2, with no indication that you were promoted at any time following your conviction and sentencing. Likewise, another supplemental character letter you included with your request for reconsideration reflects a factually inaccurate and unduly positive view of your purported promotion and performance and conduct. The Board found these letters unpersuasive based on your record and determined you were fortunate not to receive a punitive discharge for your misconduct¹.

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 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 the 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 is attached 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,

11/29/2024



¹ As previously noted, you pleaded guilty at a GCM of unlawfully breaking and entering the dwelling of another, committing an indecent assault, and making false statements.