




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


Docket No. 6617-24
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.

Although you did not file your application in a timely manner, the Board waived the statute of limitation 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 10 January 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, and applicable statutes, regulations, and policies, to include to 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) of a qualified mental health provider and your response to the AO.

You enlisted in the Marine Corps and began a period of active duty on 3 December 2007. Following completion of boot camp, and prior to attending School of Infantry training, you incurred a period of unauthorized absence (UA) from 30 March 2008 until 3 October 2008. Following your return, you accepted trial by Summary Court-Martial (SCM) for a violation of Article 86 of the Uniform Code of Military Justice and were sentenced to a \$670 forfeiture of pay and 40 days of restriction. On 30 January 2009, you were notified of processing for administrative separation by reason of misconduct due to commission of a serious offense. After consulting legal counsel, you elected to waive your right to a hearing before an administrative separation board. In his recommendation for your discharge under other than honorable conditions, your commanding officer stated:

“I extensively interviewed [SNM] ... SNM claims he was suffering from seizures due to a staph infection he allegedly developed while as a recruit and was afraid to return to the Marine Corps for fear of having further seizures. The Marine also admitted that he had an extremely difficult time as a recruit and feared that he would hurt himself or others if he continued his service. He has absolutely no desire to continue his service and said he would desert again if retained. I would normally consider retaining a Marine who has only been gone 187 days, but after interviewing this Marine and consulting with my Company Commander who interviewed him as well, it is my opinion that this individual cannot adapt to a military lifestyle and will be a danger to himself and others. Although he has been ruled mentally competent by medical authorities and has sought counsel from the chaplain, it is clear to me that he shows no potential for future service.”

Ultimately, the recommendation for your separation under Other Than Honorable (OTH) conditions was approved, and you were so discharged on 9 February 2009.

You previously applied to the Naval Discharge Review Board (NDRB) contending that your medical condition, misdiagnosis, and issues related to the receipt of proper medical care contributed to your period of UA. Your request was considered on 12 August 2012 and denied. On 15 November 2023, your request for reconsideration was heard by the NDRB. You again contended that your mental health issues, resulting from your medical condition, misdiagnosis, and lack of proper treatment, should be considered a significant mitigating factor. The NDRB noted that your condition was “arguably mitigating” but not exculpatory and, ultimately, insufficient in light of the lengthy extent of your UA period. Consequently, your request was again denied.

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 contention that you had an extremely difficult time adjusting to military life beginning with recruit training, due to mental and physical punishment from your drill instructors, which worsened over time. You state that you developed a severe MRSA during boot camp but that your infection which was initially misdiagnosed and, because it was mistreated with an ointment when you needed antibiotics, rapidly worsened. You went home on leave to visit your mother, who assisted in your receipt of civilian medical care including several ER and follow-up visits. You describe that you experienced a seizure while at the doctor’s office, having the infection drained due to the severity of the infection, and fearing this symptom would return or worsen if you returned to the Marine Corps prior to ensuring that your condition had resolved. You also submitted evidence that you have continued to have recurrent infections in the years since your experience with MRS and evidence that you were diagnosed with post-traumatic stress disorder (PTSD) in 2014 due to the trauma of dealing with a life-threatening infection and the repercussions of misdiagnosis and lack of timely treatment. You believe it is an injustice that your request for a discharge has not been granted thus far in spite of the trauma of this experience. For the purpose of clemency and equity consideration, the Board considered the evidence you submitted in support of your application.

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

Although the Petitioner denies a history of pre-service mental health symptoms, more weight has been placed on statements in his service medical record regarding pre-service suicidal ideation over his post-service recall of his mental health history. It is possible that pre-service symptoms of depression may have worsened during the stresses of military training and with his in-service medical concerns.

Although it is possible that the Petitioner's medical stressors may have seemed sufficiently life threatening to meet criteria for a diagnosis of PTSD, more information is needed on the purported traumatic precipitants of his diagnosis of PTSD to attribute this diagnosis to military service.

It is possible that mental health symptoms, combined with anxiety regarding his medical status, could have contributed to the Petitioner's decision to UA. However, it is difficult to attribute his extended UA to mental health symptoms developed in service given his failure to disclose his pre-service history of suicidal ideation. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis

The AO concluded, "it is my clinical opinion that there is in-service and post-service evidence of mental health concerns that may have been exacerbated by military service. There is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence to attribute his misconduct solely to PTSD or another mental health condition developed in service."

In response to the AO, you provided rebuttal evidence for consideration. After reviewing your evidence, the AO was revised to read, "There is some post-service evidence from civilian providers of a diagnosis of PTSD that may be attributed to military service." The rebuttal evidence was not sufficient to overcome the ultimate clinical opinion that there is insufficient evidence to attribute your misconduct solely to PTSD or another mental health condition developed during your military service due to discrepancies in your current evidence as opposed to your self-reported mental health history during military service, with more weight being given to your service records, and due to the extraordinary length of your period of UA.

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 SCM, 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. The Board acknowledged that a serious, sometimes persistent and even deadly infection, reasonably would have resulted in trauma, especially if it were initially misdiagnosed and resulted in a worsening of symptoms and delayed treatment. However, the Board concurred with the observations made not only within the AO but also by the NDRB regarding the duration of your UA period being excessive even under the application of liberal consideration. To receive emergency care with a proper diagnosis, and to begin antibiotics, the Board concurred that a shorter period of UA would likely have been excusable if

you had then collected the evidence from your civilian medical records incident to that care and had returned in a more timely manner to your assigned place of duty in order receive continuing care from military medical professionals. Rather, you elected to remain in a UA status for over half a year before returning to your duty station, at which time, as indicated in your commanding officer's recommendation, you made it abundantly clear that you had no desire to continue service; not only due to your medical condition but also due to dissatisfaction with how you were treated as a recruit during boot camp.

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,

2/4/2025

