



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. 7054-24

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.

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 22 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 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 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) (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 qualified mental health provider and your AO rebuttal submission.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You previously applied to this Board for relief on two occasions. On 17 July 2023, this Board granted you partial relief and upgraded your discharge characterization to "General (Under

Honorable Conditions)” (GEN), with a corresponding narrative reason and SPD code of “Secretarial Authority,” and also changed your reentry code to “RE-3C.” At that time, you did not proffer any mental health-related contentions with your initial petition. The Board granted relief, in part, as a matter of clemency because you provided evidence of notable post-service conduct warranting relief. The Board also determined that, due to the lack of evidence in the record to indicate that you knowingly used counterfeit money, they felt that changing the narrative reason for separation to a more general basis would also be appropriate.

On 26 February 2024, this Board denied your reconsideration request for further discharge upgrade relief and also to reinstate your rank based on the prior Board’s characterization upgrade. The Board considered the mitigation evidence you submitted and commended you for your continued post-service accomplishments. However, the Board concluded that you already received the appropriate level of relief through the Board’s prior decision and determined that any injustice in your record was adequately addressed by the Board’s July 2023 grant of relief. The Board also did not reinstate your rank to E-4, noting that your reduction was proper and in compliance with all Department of the Navy directives and policy at the time of your discharge, and that the discharge upgrade did not trigger any additional administrative changes. At that time, you also did not proffer any mental-health related contentions for the Board’s consideration. The facts of your case remain substantially unchanged.

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 paygrade. You contend that: (a) the Board removed the misconduct from your record, a decision you believe effectively nullifies the basis for your rank reduction from E-4 to E-3, which occurred during your administrative separation, (b) the circumstances surrounding your original separation were complex and deeply intertwined with mental health challenges that you were facing at the time, (c) the incident in Okinawa, which led to your separation, occurred during a period when you were grappling with several service-connected mental health conditions, that included PTSD and unspecified schizophrenia spectrum and other psychotic disorder, all of which have since been recognized and service-connected by the VA, (d) the VA has also acknowledged that you suffer from adjustment disorder with mixed anxiety and depressed mood, incurred during your Marine Corps service, (e) at the time of your incident, you were not fully aware of the extent of your mental health challenges, nor were you receiving the appropriate treatment, (f) the VA recently increased your overall service-connected disability rating from 70% to 100%, effective 1 October 2024, (g) given that this honorable Board has now upgraded your discharge and removed the misconduct from your record, you firmly believe that the basis for this rank reduction no longer applies, which is supported by the MARCORSEPMAN, and (h) while you are deeply appreciative of the previous upgrade to GEN, you believe that a fully Honorable discharge is warranted based on a comprehensive review of your service, the circumstances surrounding your separation, and your post-service conduct. For purposes of clemency and equity consideration, the Board considered the totality of the evidence you provided in support of your application.

A licensed clinical psychologist (Ph.D.) reviewed your contentions and the available records and issued an AO dated 21 October 2024. As part of the Board’s review, the Board considered the

AO. The AO stated in pertinent part:

Petitioner contends he was suffering from mental health concerns during service, which impaired his judgment and contributed to his misconduct. In his previous request for review, he claimed that he unknowingly came into possession of counterfeit money and used it for purchase of goods and on a taxi, which resulted in his apprehension by local authorities.

In May 2019, he was formally counseled regarding his conviction. He was evaluated by mental health. He reported difficulty sleeping following his release from Japanese prison. He stated that the reason he used counterfeit money was that he had taken out \$10,000 in a loan for his family...He reported trading counterfeit dollars out in town for other dollars that he then used to pay on his debts. He believed he would be less likely to be caught using the counterfeit dollars out in town than on base. He was diagnosed with Adjustment Disorder with Mixed Anxiety and Depressed Mood...He received treatment and his diagnosis remained unchanged through July 2019.

Unfortunately, there is insufficient information to attribute his misconduct to a mental health condition. His diagnosis occurred after his incarceration for his misconduct. More weight has been placed on in-service records that his symptoms onset after his release from prison over current statements.

Additionally, there are inconsistencies with his in-service report to his mental health provider regarding the circumstances surrounding his misconduct and current statements that he did not know that the currency was counterfeit. These discrepancies raise questions regarding his candor.

The Ph.D. concluded, "it is my clinical opinion that there is in-service and post-service evidence from the VA of a mental health condition that may be attributed to military service. There is post-service evidence of a diagnosis of PTSD. There is insufficient evidence to attribute his misconduct to PTSD or another mental health condition."

Following a review of your AO rebuttal submission and your additional correspondence regarding your updated 100% VA rating, the Ph.D. did not change or otherwise modify their original AO.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. First and foremost, the Board declined to retroactively promote you back to the rank of Corporal (E-4) based on the Board's 2023 discharge upgrade. The Board noted that the Wilkie Memo states the following: "Changes to the narrative reason for a discharge and/or an upgraded character of discharge...should not result in separation pay, retroactive promotions,...or similar benefits that might have been received if the original discharge had been for the revised reason or had the upgraded character." The Board noted your administrative separation was legally and factually sufficient, and your corresponding administrative reduction

in rank to Lance Corporal (E-3) was in compliance with all Department of the Navy directives and policy at the time of your discharge.

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 of any nexus between any mental health conditions and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to any mental health-related conditions or symptoms. Moreover, the Board concluded that the serious misconduct underlying your criminal conviction and discharge involving the use of counterfeit currency was not the type of misconduct that would be excused or mitigated by any mental health conditions even with liberal consideration. 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 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 was not persuaded by the MARCORSEPMAN 1004 (“1004”) provision you cited. The Board noted that the version of the MARCORSEPMAN in effect at the time of your 2019 discharge makes no mention of the specific 1004 text that you cite. The Board also observed that neither of the two previous MARCORSEPMAN versions contained the 1004 language you proffer.

The Board noted that the July 2023 Board granted relief, in part, because there was no evidence in the record to indicate you knowingly used counterfeit money. The current Board, however, determined your use of counterfeit money was intentional and knowing. The Board placed significantly more weight to your 2019 statements for purposes of medical diagnosis/treatment and your present sense impressions when receiving medical treatment at such time, rather than your current post-service narrative of events. The Board also observed that the NDRB in August 2022 noted in their discussion section: (a) your considerable financial stress offered you a motive for using counterfeit money, (b) you were not completely forthright regarding the circumstances surrounding your misconduct, and (c) you did not offer a plausible explanation of how you were in possession of counterfeit money at the time of your arrest.

The Board further noted that your conviction was never dismissed. You were convicted by a Japanese criminal court of a serious counterfeiting offense and sentenced to a term of confinement that the Court suspended for eighteen months. The Board concluded a suspended sentence is neither the functional equivalent of, nor the same as, an outright dismissal of a criminal offense on the merits.

The Board noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. The Board did not believe that your record was otherwise so meritorious as to deserve a further discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that an OTH or GEN characterization is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Marine.

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 in discipline clearly merited your discharge. While the Board carefully considered the evidence you submitted in mitigation - to include your continued noteworthy post-service conduct, 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.

In the absence of sufficient new evidence for reconsideration, the decision of the Board is final, and your only recourse would be to seek relief, at no cost to the Board, from a court of appropriate jurisdiction.

Sincerely,

12/12/2024

