



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

■
Docket No. 9087-24
Ref: Signature Date

■■■■■■■■■■
■■■■■■■■■■
■■■■■■■■■■

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 26 March 2025. 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

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 enlisted in the Marine Corps and began a period of active duty on 26 July 1972. On 23 March 1973, you commenced a period of unauthorized absence (UA) that concluded upon your apprehension and return to military authorities on 24 May 1973; a period totaling 62 days. On 21 June 1973, you were found guilty by a special court-martial (SPCM) of the forgoing period of UA. As punishment, you were sentenced to confinement, forfeiture of pay, and

reduction in rank. Prior to your SPCM, on 14 June 1973, you received a mental health evaluation and were diagnosed with character disorder, immature Type, and recommended for administrative separation.

Consequently, you were notified that you were being recommended for administrative discharge from the Marine Corps by reason of unsuitability based on your character and behavior disorder. You waived your right to submit a statement concerning your administrative discharge and the commanding officer forwarded your administrative separation package to the separation authority recommending your administrative discharge from the Marine Corps with a General (Under Honorable Conditions) (GEN) characterization of service. The separation authority approved the recommendation and you were so discharged on 17 August 1973.

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 character of service, change your reason for separation to permanent disability retirement due to post-traumatic stress disorder (PTSD), and remove the recommendation for separation from your record. You contend that: (1) an upgrade of your character of service is warranted because you were misdiagnosed, (2) you suffered from PTSD relating to two violent assaults against you, (3) the wording within your discharge documents is unjust labeling you as unsuitable because of your misdiagnosis and effectively ended your opportunity for law enforcement employment, (4) upon entering boot camp, you did not have any health or mental [health] issues, (5) upon transferring to your new duty station, you begin experiencing claustrophobia and panic attacks, (6) you went "AWOL" several times trying to escape your fears, (7) you attribute going AWOL to PTSD from the assaults you experienced in boot camp, (8) the Navy psychologist was not acting in your best interest, (9) the Navy psychologist put together a biased report for the prosecution for your SPCM, (10) the biased psychiatric evaluation report became the deciding factor for your command to proceed with your SPCM, (11) the assaults you experienced were the direct cause of your PTSD and 51 years of depression, panic attacks, and claustrophobia, and (12) these conditions have led to your high blood pressure, heart issues, arthritis, and nerve problems. For purposes of clemency and equity consideration, the Board considered the documentation you provided in support of your application.

As part of the Board's review, a qualified mental health professional reviewed your contentions and the available records and provided the Board with an AO on February 2025. The AO stated in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition during his military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. He has submitted evidence of post-service diagnoses of PTSD, Depression, and Anxiety. Unfortunately, the records submitted do not note the etiology of, or rationale for the given diagnoses. Thus, it is not possible to state a nexus exists between his post-service diagnoses and his in-service misconduct. Additional records (e.g., active duty medical records, post-service mental health records describing the Petitioner's

diagnosis, symptoms, and their specific link to his separation) would aid in rendering an alternate opinion.

The AO concluded, “it is my clinical opinion that there is sufficient evidence of post-service diagnosed mental health conditions. There is insufficient evidence to attribute his misconduct to a mental health condition.”

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the negative impact your conduct likely had on the good order and discipline of your command. Further, the Board concurred with the AO that, while there is sufficient evidence of post-service diagnosed mental health conditions, there is insufficient evidence to attribute your misconduct to a mental health condition. As the AO explained, the records submitted do not note the etiology of or rationale for the given diagnoses. Therefore, it is not possible to state a nexus that exists between your post-service diagnoses and your in-service misconduct. Furthermore, the Board agreed there is no evidence that you were diagnosed with a mental health condition during your military service or that you exhibited any psychological symptoms or behavioral changes indicative of a mental health condition. Therefore, the Board determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions and observed that you provided no evidence, other than your statement, to substantiate your contentions. Additionally, the Board observed that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active-duty trait average calculated from your available performance evaluations during your enlistment was approximately 1.6 in conduct/military behavior. Marine Corps regulations in place at the time of your discharge recommended a minimum trait average of 4.0 in conduct/military behavior, for a fully Honorable characterization of service; a minimum mark you failed to achieve. As a result, the Board concluded significant negative aspects of your service outweigh the positive aspects and continues to warrant a GEN characterization.

Regarding your request to change your reason for separation to disability retirement and remove your recommendation for separation from your record, the Board found no basis to grant relief. First, the Board determined that the record evidence demonstrates that, even if you had a disability condition, there is no evidence that any medical provider determined that you had any conditions that warranted referral to a medical board for a determination of fitness for duty within the disability evaluation system. In addition, there is no indication that any leader in your chain of command prepared any non-medical assessment describing your inability to perform the duties of your rate due to a qualifying disability condition. Further, even assuming, *arguendo*, that you had a qualifying mental health diagnoses while you were on active duty, it would not necessarily result in the award of a service disability retirement. A diagnosis alone is not the standard for the award of a service disability retirement. Rather, as mentioned, to be eligible for a service disability retirement, a service member must have a qualifying condition that has been medically-determined to be unfitting at the time of service; something that does not exist in your record. Second, the Board found no error or injustice with the recommendation for

administrative separation. The evidence you provided is temporally remote to your active duty service and does not necessarily refute the character order diagnosis issued in 1973. Therefore, the Board found the diagnosis issued contemporaneously with your active duty service to be credible, more probative than your current diagnoses, and sufficient to support your recommendation for administrative separation.

As a result, while the Board carefully considered the evidence you submitted in mitigation, even in light of the Kurta, Hagel, and Wilkie Memo 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. 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,

4/8/2025

■

Executive Director

Signed by: ■