



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. 4166-25
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, considered your petition for reconsideration on 4 June 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.

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.

As this Board has set forth before in response to your previous petitions, a review of your record reveals that you enlisted in the Marine Corps and commenced active duty on 27 November 1973. On 1 October 1974, you received nonjudicial punishment for two instances of unauthorized absence. You received non-judicial punishment again on 24 July 1975 for disobeying a direct order from a non-commissioned officer. On 17 May 1976, you were convicted by a special court-martial for unauthorized absence from your appointed place of duty. On 3 January 1977, you were convicted a second time by a special court-martial convicted you for two instances of unauthorized absence, which totaled 103 days. On 14 June 1977, you were issued a written counseling, set forth in a Page 11 Administrative Remarks, relating to your frequent involvement

of a discreditable nature with military authorities, and warning you that further involvement would result in discharge under other than honorable conditions.

On 11 July, 1977, you were evaluated by a psychiatrist at ██████████. The psychiatrist diagnosed you with Antisocial Personality Disorder. The psychiatrist's report included a discussion of your childhood circumstances. The psychiatrist further reported that you had a strong desire to leave the Marine Corps and concluded that you were "not mentally ill." The psychiatrist further reported that if you were "retained on active duty one can expect to continue to have many problems with this individual" and that you would cause "considerable administrative burdens to military services."

Shortly thereafter, on 20 July 1977, you received another nonjudicial punishment, this time for disobeying an order and being disrespectful in language. On 18 August 1977, you underwent a separation physical examination (SPE), the purpose of which was to determine if you were fit for separation. During the SPE, its purpose was explained to you, advising you that if you had any condition that interfered with your ability to perform your military duties, you were to advise the examining physician. The report of the SPE indicated the conclusion that you were qualified for performance at sea, in foreign service, or in the field. You were thereafter notified of the initiation of administrative separation processing and your rights in connection therewith. You waived your rights to an administrative separation board.

On 27 September 1977, your commanding officer submitted his recommendation to his commanding general that you be discharged by reason of frequent involvement of a discreditable nature with military authorities. According to your commanding officer, since joining his unit on 18 November 1974, you had been "a continual administrative burden, a demoralizing factor to his peers, and an intolerable disciplinary problem. While a member of this unit [Petitioner] has been found guilty at two Special Courts-Martial and three Non-Judicial Punishments. Requiring constant supervision and totally untrustworthy he has established a pattern of willingly placing himself in violation of the UCMJ." Your commanding officer continued, "[Petitioner] has been repeatedly advised that his course of poor performance and conduct could lead to his being administratively discharged. Having proven himself to be an incorrigible malcontent, his continual intolerable actions demonstrate his lack of regard for his counseling and is an affront to this Battalion and the Marine Corps." With respect to your mental state, your commanding officer wrote, "[Petitioner] was evaluated on 12 July 1977, at this Commanding Officer's request, by Division Psychiatry. At that time, [Petitioner] expressed a strong desire to get out of the Marine Corps. While not mentally ill, he doesn't have the ability to cope with the pressures and environment of the Marine Corps. Diagnosis: Anti-social personality disorder."

On 14 October 1977, the lawyer for the separation authority reviewed your discharge paperwork and opined that you had been provided all rights and that your administrative processing was sufficient in law and fact. Thereafter, you were discharged with an Other Than Honorable (OTH) characterization of service on 26 October 1977.

In a prior letter to you, this Board explained that, after your discharge, you were diagnosed with phencyclidine (PCP) drug abuse in 1978, intermittent explosive disorder in 1982, and major depression in 1990. In 1979, you submitted an application to the Naval Discharge Review Board (NDRB) seeking an upgrade in your discharge characterization. On 29 June 1979, the NDRB

informed you that it recommended no change to your discharge. In 1981, you submitted a request for an in-person hearing review of your discharge before the NDRB. On 19 November 1982, the NDRB issued its report that you did not appear for your in-person review, but it nevertheless conducted another record review, and recommended no change in your discharge.

In 1993, you file an application with this Board in which you requested that your discharge be upgraded. In denying your application, the Board explained in its denial letter dated 22 September 1993, with edited formatting, as follows:

In its review of your application the Board carefully weighed all potentially mitigating factors, such as your youth and immaturity, limited education and your contentions of personal problems and that you were forced, under extreme duress, to request the discharge under other than honorable conditions. However, the Board concluded that these factors and contentions were not sufficient to warrant recharacterization of your discharge, given your record of three NJPs and two convictions by SPCM.

In this regard, the Board noted that your misconduct included UAs totaling about 105 days. Further, the Board concluded that if you had personal problems, as you contend, you certainly had the opportunity to reveal such problems to military authorities when you were counselled concerning your frequent involvement with military authorities. In addition, there is no evidence in the record to show that you were forced to accept the discharge under other than honorable conditions. In this regard, the Board was aware that at the time you were notified of the recommendation for discharge, you were advised of all of your rights, including the right to have your case heard by an administrative discharge board. However, you waived all of your rights. Additionally, the Board concluded that the RE-4 Reenlistment Code was proper and appropriate since you were discharged with an other than honorable discharge by reason of misconduct. An RE-4 Reenlistment Code is routinely assigned under such circumstances. Accordingly, your application has been denied.

You provided documentation in your prior petition that, in 1995, the Social Security Administration determined you were eligible for disability benefits due to your mental condition and personality disorder.

You filed another application for relief with this Board in 2018, in which you requested the following: a disability discharge, change to your reentry code, back pay for leave lost, service credit for lost time due to your unauthorized absences and confinement while on active duty, and restoration of lost paygrades due to your court-martial conviction. In support of your requests, you asserted that you suffered from a number of physical conditions including issues with your feet, wrists, and left knee. You also contend you were pushed to an OTH discharge by your chain of command. Finally, you argued that your post-discharge mental health conditions should be taken into account. In order to assist it in reviewing your petition, the Board obtain an advisory opinion (AO) from a mental health professional. The AO, dated 22 January 2019, was considered unfavorable to your position, explaining as follows:

Unfortunately, the Petitioner has provided limited post-service treatment records. There is insufficient information that the Petitioner's was experiencing his post-service diagnoses of bipolar disorder, depression, or intermittent explosive disorder during his military service. The information provided by the Petitioner presents mental health conditions that were diagnosed years or even decades after his discharge from military service. In-service, he was diagnosed with a personality disorder. There is insufficient information to attribute the Petitioner's misconduct to his diagnosed personality disorder. There could be many contributing factors to his misconduct, including characterological traits. Post-service treatment records describing the Petitioner's mental health symptoms and their specific link to his misconduct are required to render an opinion.

The AO concluded that "there is insufficient information to attribute the Petitioner's misconduct to a mental health condition experienced during service."

The Board reviewed your petition on 14 March 2019 and determined that it found no error or injustice in your naval records. In its letter, dated 18 March 2019, the Board explained that in making its findings, it substantially concurred with the AO described above. In particular, the Board explained it concluded that there was insufficient evidence to form a nexus between your post-discharge mental health diagnosis and your misconduct. The Board also explained that it found no error in your discharge for misconduct, as opposed to being processed for disability retirement, in light of your three nonjudicial punishments and two special courts-martial convictions. On this point, the Board explained that it considered the severity of the offenses, the impact on good order and discipline, and the administrative burden caused by your actions, which it determined were rational reasons and sufficient to support the decision to administratively separate you and issue you an OTH characterization of service. The Board did note that you were diagnosed with a personality disorder in 1977 but it concluded that diagnosis was not sufficient mitigation to offset the multiple incidents of misconduct and, the diagnosis alone, was insufficient to overcome your administrative separation proceedings for misconduct. Finally, the Board considered your history of mental health issues after your discharge but determined that there were too many potential intervening factors to be able to reliably determine whether those conditions existed while you were on active duty. Here, the Board mentioned your post-service abuse of PCP, a drug that has strong psychoactive effects and links to other mental health conditions, was a potential intervening factor that could have led to exacerbation of your mental health conditions after your release from active duty.

In your current request for reconsideration, you requested that your discharge be upgraded from OTH and you be assigned a service disability retirement at 100%. As a new matter in support of your request for reconsideration, you provided evidence that you have owned a business and you have also added character references. After its receipt of your request for reconsideration, this Board emailed your counsel, explaining that a "preliminary review of your application revealed that you did not include adequate materials or documentation to support your assertions of a mental health condition, Post-Traumatic Stress Disorder (PTSD), Traumatic Brain Injury (TBI), and/or treatment for military sexual trauma." After waiting thirty days, this Board received no response and heard your case.

In its review of your request for reconsideration, the Board carefully considered the new matter that you provided and determined it was insufficient to overcome the Board's prior decision denying your requested relief. In evaluating your requested relief, the Board viewed your current assertions, new matter presented, and your prior assertions in your 2018 petition through the rubric set forth in the clarifying guidance set forth in 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). In doing so, the Board applied special and liberal consideration to your claims. Despite the application of this special and liberal consideration, and in view of all of your claims and assertions, the Board nevertheless found that you provided insufficient evidence of an error or injustice in your naval record. The Board continued to find the AO it requested for your 2018 petition to be sound. Further, the Board believed that its rationale set forth in its 18 March 2019 letter to be reasonable and supported by substantial evidence; therefore, the Board incorporates that rationale herein. Ultimately, the Board found that the new matter you provided in your current request for reconsideration was insufficient to overcome the Board's prior decision. The Board also observed that it provided you an additional period of time to provide additional evidence, and you did not provide such evidence. 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,

6/23/2025
