



**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: 8093-20

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 the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 Under Secretary of Defense for Personnel and Readiness regarding requests by Veterans for modification of their discharge due to mental health conditions, sexual assault, or sexual harassment (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 12 July 2021. 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, including 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 reviewed a 30 May 2021 advisory opinion (AO) from a mental health professional, a copy of which you were provided and to which you did not provide a response.

On 16 December 1974, you enlisted in the Marine Corps and began a period of active duty. In November 1975, you received nonjudicial punishment for a two hour period of unauthorized absence. On 30 September 1976, you received nonjudicial punishment for a four day period of unauthorized absence. On 29 December 1976, you were convicted by a summary court-martial for two periods of unauthorized absence, one for 22 days, and another for 35 days. On 14 February 1976, you commenced another period of unauthorized absence which lasted 542 days, returning on 11 August 1977. On 17 August 1977, facing charges for the lengthy unauthorized

absence, you submitted a request, for the good of the service, to be discharged in lieu of a trial by court-martial. On 19 August 1977, your commanding general approved your request for discharge, and on 22 August 1977, you were discharged with an other than honorable characterization of service.

The Board carefully considered all potentially mitigating factors in your petition to determine whether the interests of justice warrant relief in your case including in accordance with the Wilkie Memo. You contend in your petition that you received a concussion, were incarcerated, and had no memory of where you were supposed to be. You further contend that your mental state was not in order after your concussion and that you are now seeing a psychologist.

In light of your assertion of a mental health condition, the Board received, and reviewed, the 30 May 2021 AO. The AO reviewed your naval records as well as all of the materials that you submitted, and explained that your “in-service records do not contain evidence of a diagnosis of a mental health condition.” The AO further explained that, while you asserted that you “suffered from mental health issues following a concussion, “[you]” did not provide any evidence of symptoms, traumatic events, or a post-service clinical diagnosis to support [your] claim.” The AO concluded that, “it is my considered medical opinion the preponderance of available objective evidence failed to establish Petitioner was diagnosed with a mental health condition, suffered from a mental health condition at the time of his military service, or his in-service misconduct could be attributed to a mental health condition.”

In review of all of your materials, the Board did not find an injustice in your record warranting relief. The Board concurred with the finding of the AO. A review of your overall service record demonstrated that you received nonjudicial punishment on two occasions, you were convicted by a summary court-martial, and you were discharged as a result of a very serious and lengthy period of unauthorized absence. You did not provide evidence sufficient to rebut these serious negative factors. In conclusion, given the totality of the circumstances, as a review of your overall service record, 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 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,

7/15/2021

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Executive Director

Signed by █