



**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: 3106-21  
Ref: Signature Date

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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.

A three-member panel of the Board, sitting in executive session, considered your application on 27 January 2022. The names and votes of the members of the panel 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 USECDEF Memo of 25 Jul 2018 (Wilkie memo). The Board also considered the 14 April 2021 advisory opinion (AO) provided by the Marine Corps Manpower Management Division Separation and Retirement Branch (MMSR-6) and the 28 October 2021 AO provided by the Head, Military Personnel Law Branch (JPL), as well as your rebuttal.

The Board carefully considered your request to have your high-36 month average retirement pay recalculated to include your time in service as a colonel/O6 and a time-in-grade waiver be granted in order to allow you to retire as a colonel.

The Board noted that, on 28 April 2019, █ Police arrested you near █, █ for driving while intoxicated (DWI). On 12 August 2019, you plead *nolo contendere* and the Fauquier General District Court found you guilty of DWI. On 19 August 2019, the Commander, Marine Corps Installations Command (COMMCICOM) formally counseled you and documented your conviction in a Report of Civilian Conviction. On 24 September 2019, the Commanding General, Marine Corps Combat Development Command (CG, MCCDC) directed that the COMMCICOM convene a Board of Inquiry (BOI), and you were notified that you were required to show cause for retention on 7 October 2019.

On 23 January 2020, you were evaluated by a medical provider for post-traumatic stress disorder (PTSD) and traumatic brain injury (TBI), who concluded that you had neither. On 18 February 2020, you submitted a Voluntary Retirement Request in Lieu of Further Administrative Processing, and acknowledged that you could be retired in a lesser grade. You wrote a statement in which you took responsibility for your actions, and requested to retire in the grade of colonel.

On 4 May 2020, the Deputy Commandant for Manpower and Reserve Affairs (DC M&RA) forwarded the case to the Assistant Secretary of the Navy Manpower and Reserve Affairs (ASN M&RA), recommending that your time-in-grade waiver be denied and that you be retired in the grade of lieutenant colonel/O5. On 8 May 2020, ASN (M&RA) approved your retirement in the grade of lieutenant colonel. You were retired on 31 July 2020 with a Honorable characterization of service; the narrative reason for separation was Unacceptable Conduct.

On 26 January 2021, the Department of Veterans Affairs (VA) determined “a service connection for [PTSD] claimed as persistent insomnia, sleep disturbance and anxiety is granted with an evaluation of 100 percent effective 1 August 2020.”

The Board considered your contention that your 23 January 2020 separation physical was inadequate, as you were examined by a clinical social worker and not fully evaluated by a psychiatrist for PTSD and TBI. You assert that your examination with the VA is more accurate as a licensed psychiatrist with 47 years of experience evaluated you. You also assert that your PTSD contributed to your misconduct and that your mental state should have been a mitigating factor when deciding whether to grant the three year time-in-grade-waiver. You further argue that your retirement pay is calculated incorrectly and should include the two years that you served as a colonel.

The MMSR-6 AO determined that your retirement pay should not be calculated using his “High-36 Average because [your] reduction to lieutenant colonel upon [your] retirement was not solely due to failure to complete the time-in-grade requirement as a colonel, but also because of [your] unacceptable conduct.”

The JPL AO noted that commissioned officers in the grade of O5 or O6 must serve a minimum of three years’ time-in-grade to be eligible for retirement in the grade. The AO opined that a time-in-grade waiver is not warranted given that you were a colonel for only one year before your misconduct, and that your record does not support an exception to policy to grant you the three year time-in-grade requirement. The AO also determined that PTSD should not be considered a mitigating factor, as you never alleged that you had PTSD, nor that PTSD affected your conduct when requesting retirement in lieu of further administrative processing.

The Board carefully considered your rebuttal to the JPL AO. In your rebuttal, you argue that you are not a physician and could not self-diagnose, but a very experienced VA physician did find that you suffer from PTSD and that your symptoms of PTSD did cause you to drink more. You also referenced the Wilkie Memo and contend that your diagnosis from the VA psychiatrist is persuasive evidence that the condition existed during military service. You also argue that you received an unjust punishment because within the same timeframe of the incident, another Marine colonel who received a DWI charge was allowed to retire as a colonel.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo<sup>1</sup>. These included, but were not limited to, your record of service, diagnosis of service-connected PTSD, your desire for approval of a time-in-grade waiver, and high-three retirement pay, based on your contentions that PTSD contributed to your misconduct and that your mental state should have been a mitigating factor when deciding whether to grant the three year time-in-grade-waiver.

The Board also noted that when you were a major, you were issued a fitness report for the reporting period 5 November 2010 to 8 April 2011, when you served in the headquarters element in a staff support role coordinating planning efforts in a combat area during Operation New Dawn. The Board noted your claim that after this deployment, you began to have difficulty falling asleep and remaining asleep, that your personality also changed as you became more short-tempered and had thoughts of suicide, and that you began compensating by drinking more.

Additionally, the Board considered your claim that you could not handle an appearance at a BOI and that “[your] mental state was deteriorating fast” and you felt that “[you] had to exit the Marine Corps as expeditiously as possible for [your] well-being.” The Board also noted, however, that after you were notified on 7 October 2019 that you were required to show cause for retention, you requested to the ASN (M&RA) to retire on 1 March 2021 in order to “satisfy [your] 3-year obligation for [your] promotion to Colonel.”

Based upon its review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. The Board also substantially concurred with the JPL AO and noted that in your separation physical, you claimed that you “suffered from anxiety,” however, you stated that your symptoms were “as a result of [your] case” presumably referring to your legal case. You also did not mention any issues related to your deployment. The Board thus concurred with the JPL AO that your chain of command’s decision to not consider PTSD as a mitigating factor was reasonable and not erroneous. The Board also determined that your misconduct outweighed these mitigating factors and your retirement in the lesser grade was warranted. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

With regard to your example of unfair and disparate treatment, another colonel was allowed to retire in-grade after a DUI conviction, the Board determined that your case was determined its merits, and that adjudication of the facts and circumstances regarding another Service member’s misconduct is outside the purview of this Board.

The Board thus determined that you failed to provide sufficient evidence demonstrating the existence of a probable material error or injustice and concluded that the applicable laws and regulations were followed regarding the denial of your time-in-grade waiver. The Board also concurred with the MMSR-6 AO that your retirement pay was computed correctly.

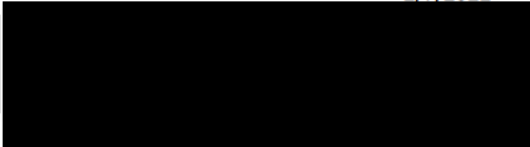
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<sup>1</sup> The Wilkie Memo provides guidance to the Board for individuals seeking an upgrade to their characterization of service, narrative reason for separation, separation code, former member’s DD Form 214 reflecting the circumstances of the discharge, and reentry code.

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,

2/7/2022

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Executive Director

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