



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: 4183-21
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.

Although you did not file your application in a timely manner, the statute of limitations 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 19 November 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, 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 provider which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

You enlisted and began a period of active duty in the Marine Corps on 3 September 1975. You entered a five day period of unauthorized absence (UA) on 17 February 1976 and received nonjudicial punishment (NJP) for violation of Article 86, Uniform Code of Military Justice (UCMJ) on 3 March 1976. You entered a 78 day period of UA on 17 March 1976 and then a one day period of UA on 9 June 1976. Consequently, these charges were referred to a special court martial (SPCM) on 25 June 1976. You consulted with military counsel and submitted a request for discharge for the good of the service to escape trial by court martial. Your request was approved and you were separated on 19 July 1976 with an other than honorable (OTH) characterization of service.

You contend you were declared absent without leave due to having your appendix removed at a civilian hospital. You state your doctor did not release you to return to active duty and when you did return, your command did not accept the medical documents you provided and did not place you on light duty as you recovered. You further contend the contaminated drinking water at Camp Lejeune caused you to experience mental health issues that hurt your ability to understand what was going on with your discharge. You state you agreed to the OTH because you were told it would be automatically upgraded after six months, you did not know this promise was untrue, and you did not understand this was a permanent discharge.

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. These included, but were not limited to, your contentions noted above and your desire to upgrade your discharge. The Board also relied on the AO in making its determination. The AO noted that there was insufficient evidence of a diagnosis of a mental health condition that could be attributed to military service, or that your misconduct could be attributed to a mental health condition. Additionally, in its deliberations, the Board noted that you did not provide any documentation in support of your civilian hospitalization. Based upon this review, the Board concluded that the potentially mitigating factors in your case were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP, periods of UA, and request for discharge, outweighed these mitigating factors. 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,

12/15/2021

[REDACTED]

Executive Director

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