



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

█  
Docket No. 4185-21  
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 your application was not filed in a timely manner, the Board found it in the interest of justice to waive the statute of limitations and consider your application on its merits. A three-member panel of the Board, sitting in executive session, considered your applications on 13 January 2022. The names and votes of the members of the panel will be furnished upon request. Your allegations of 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 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo). In addition, the Board considered the advisory opinions (AO) furnished by Headquarters Marine Corps (MMPR-2) and a qualified mental health professional dated 29 November 2021. The Board also considered your rebuttal statement in response to the AO furnished by MMPR-2. Although you were provided a copy of the AO furnished by the mental health professional, you chose not to submit a rebuttal.

You presented documentation from the Department of Veterans Affairs as new evidence from previous Board consideration. In light of this, the Board carefully considered your request to restore your rank to Sergeant/E-5. You contend the command waited until 10 days before your EAS to convene nonjudicial punishment (NJP) because they knew you were headed to school and would not be able to appeal.

You enlisted in the U.S. Marine Corps on 30 September 1985 and served without disciplinary action until 17 December 1991 when you received NJP for adultery. You were reduced in rank to Corporal/E-4. On 29 December 1991, you were discharged with an Honorable characterization of service at the completion of your required active service.

Your request was fully and carefully considered by the Board in light of the Secretary of Defense's Memorandum, "Supplemental Guidance to Military Boards for Correction of Military/Naval Records Considering Discharge Upgrade Requested by Veterans Claiming Post Traumatic Stress Disorder" of 3 September 2014 and the Principal Deputy Under Secretary of Defense's Memorandum, "Consideration of Discharge Upgrade Requests Pursuant to Supplemental Guidance to Military Boards for Correction of Military/Naval Records by Veterans Claiming PTSD or TBI" of 24 February 2016.

A qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO regarding your assertion that you were suffering from PTSD and bipolar disorder, which were not considered by your command. The AO concluded that there is no in-service record that you were diagnosed with a mental health condition, and it would be difficult to understand how adultery would be a symptom of PTSD. The AO further concluded that although there is post-service evidence that you incurred PTSD during military service, there is insufficient evidence that your misconduct could be attributed to PTSD symptoms.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contention above, and that due to your mental state and therapy, you did not care at the time; however, after working with psychologists and psychiatrists, you are now wanting to correct issues.

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 above, your character of service, and your overall service record. The Board noted your post-service PTSD diagnosis and took that into consideration in making their determination. However, based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your Commander felt it necessary to administer NJP and the reduction in rank was appropriately awarded. 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,

1/28/2022

Executive Director