



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

██████████
Docket No: 4732-21
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. Additionally, whether or not an individual is entitled to veterans' benefits is a matter under the cognizance of the U.S. Department of Veterans Affairs (VA). You may contact the nearest office of the VA concerning your right to apply for benefits; and if benefits have been denied, you may be able to appeal the denial under procedures established by the VA.

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 17 December 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 17 July 1980. On 16 October 1982 you engaged in misconduct that resulted in your conviction by general court martial (GCM). On 17 October 1982 you underwent a physical examination for fitness for confinement. You were found fit and placed in pretrial confinement. On 19 November 1982 a psychiatric board convened and concluded you were capable of conducting or cooperating intelligently in your defense and were psychiatrically fit for duty. You were convicted by GCM on 8 December 1982

of four specifications of assault consummated by a battery for unlawfully placing your hands around the necks of two Marines and striking two Marines; three specifications of communication of a threat; solicitation to commit sodomy; and indecent assault by wrongfully exposing yourself, touching another Marine, and attempting to kiss him with intent to gratify your lust in violation of Articles 128 and 134, Uniform Code of Military Justice (UCMJ). You were sentenced to confinement at hard labor for one year, forfeitures, reduction in rank to private (E-1), and to be separated from the Marine Corps with a bad conduct discharge (BCD). You were hospitalized on 23 January 1983 due to a subarachnoid hemorrhage. You were stabilized and underwent surgery to treat an anterior communicating artery aneurysm. Following successful surgery for your aneurysm, your recovery included occupational and physical therapy and mental health treatment. On 18 April 1983 your final psychiatric evaluation stated you were competent at that time and able to handle your own affairs. Neurosurgery recommended that after returning to full duty you be confined to the barracks (not returned to the brig) pending discharge. You were returned to full duty and released from the hospital to the barracks, and presumably placed on voluntary appellate leave. After your findings and sentence were upheld on appellate review, you were discharged on 15 November 1984 with a BCD.

You contend you incurred a traumatic brain injury while in service and that even before your hospitalization, your brain was not functioning properly because the aneurysm was slowly bleeding into the realm of the amygdala and hypothalamus. You state your behavior, which had been stellar prior to sustaining your injury, suddenly degenerated into that of an insane person throwing away everything you had always held dear. You contend you loved being in the Marines and it was to be your career and salvation from the tyranny of violence you experienced growing up in ██████████. You state you are now a changed man and better person since leaving the service, would like veterans benefits, and served three years honorably before your discharge the fourth year.

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 desire to upgrade your discharge. The Board also relied on the AO in making its determination. The AO noted that your contention that “pre-aneurysm leakage” led to your misconduct is not supported by the objective evidence which included being found fit on your confinement physical examination, lack of any medical or mental health symptoms prior to hospitalization, and a sanity board requested by your defense counsel finding you had no psychiatric illness, were competent to stand trial, and responsible for your actions. Consequently, the AO concluded that the preponderance of objective evidence showed your misconduct occurred prior to the medical event, and was not mitigated by any medical or mental health condition. Additionally, in its deliberations, the Board noted that you did not provide any documentation in support of your post-service accomplishments or clemency request. 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 GCM, 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,

1/13/2022

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Executive Director

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