



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: 4859-21
Ref: Signature Date



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 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 20 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). Additionally, the Board considered a 12 November 2021 advisory opinion (AO) furnished by a qualified mental health provider, your response to the AO of 24 November 2021, and the further opinion of the AO after review of your response.

You enlisted in the Marine Corps and commenced a period of active duty on 28 September 1973. From 14 to 17 January 1974, you were in an unauthorized absence status, and on 8 February 1974, you received nonjudicial punishment. On 19 February 1974, you received nonjudicial punishment for disobeying an order on two occasions, assaulting a corporal, and being disrespectful in language toward a sergeant. On 7 May 1974, you received nonjudicial punishment for sleeping on post. On 19 September 1974, you were convicted by a special court-martial for stealing a .45 caliber pistol and communicating a threat to a lance corporal. The

charge of stealing a pistol was later disapproved by the convening authority. Your sentence included a bad conduct discharge. On 4 October 1974, you were evaluated by a military psychologist, who reported that you did not present any psychiatric complaints, noted that you exhibited traits of an immature personality disorder, and determined that you were fully medically qualified to return to duty. On 31 December 1975, you were discharged.

In 1979, you filed an application with the Naval Discharge Review Board (NDRB), in which you contended that your discharge was cruel and unjust. The NDRB did not find any error in your discharge and denied your application on 18 October 1979. In 1985, you filed another application with the NDRB, in which you contended that your discharge was improper because the charges at his court-martial were downgraded and your remaining charges may have been subject to bias. The NDRB denied your application on 14 November 1985. In 2015, you filed a petition with this Board in which you contended the Camp Lejeune water supply impaired your cognitive functioning. On 20 May 2016, this Board denied your petition. On 7 September 2017, you filed a petition for reconsideration with this Board, which was denied due to its failure to provide new and material evidence. In 2018, you filed another petition for reconsideration with this Board in which you provided new evidence not previously considered by this Board. On 24 September 2019, this Board determined that the documentation that you provided, even though not previously considered by the Board, was insufficient to establish the existence of probable material error or injustice.

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 this Board has had the opportunity to correct inequities over the course of several years of case development and it failed to recognize the acute toxic exposure symptomology in your medical records. You provided a personal statement as well as enclosures to your petition, setting forth and describing your position that the Camp Lejeune water contamination caused in you a neurological condition, which mitigates the misconduct that resulted in your discharge.

In connection with your assertion that you suffered from PTSD, the Board requested, and reviewed, the AO. In preparing the AO, the mental health provider reviewed your service record as well as your petition and the matters that you submitted. According to the AO:

In service, the Petitioner was evaluated by a military psychologist prior to confinement. Unfortunately, this evaluation was his best opportunity to disclose any mental health symptoms he may have been experiencing, such as sleeplessness or trouble concentrating, which may have contributed to his behavior. There is insufficient post-service information to consider whether he may have incurred PTSD or another unfitting mental health condition. As currently reported, it is difficult to consider that the altercation in which the Petitioner gained control of a weapon and made threats to the opponent meets the criteria for a traumatic precipitant to PTSD. Additional information, such as post-service records describing his mental health diagnosis, symptoms, and their specific link to his misconduct, are required to render an alternate opinion.

Should the Petitioner choose to submit additional records, they will be reviewed in context of his claims.

The AO concluded, “it is my considered medical opinion that there is insufficient evidence that the Petitioner may have incurred PTSD or another unfitting mental health condition during military service, and there is insufficient evidence that his misconduct could be mitigated by an unfitting mental health condition.” You provided a response to the AO, in which you state that the AO improperly offered a post-service opinion without acknowledging the Camp Lejeune 1974 toxic chemical environment. You further explained that the suggestion that the obligation was on you to bring to the attention of the psychologist to test for chemical poisoning and exposure symptomology flies in the face of reality and common sense. The Board reviewed your response to the AO in its entirety. On 9 December 2021, the preparer of the original AO reviewed your response, and opined that it did not contain new medical information, and therefore did not alter the opinion of the original AO.

Based upon its review, the Board concluded the potentially mitigating factors that you raised were insufficient to warrant relief. With respect to your contention, the Board concurred with the findings of the AO. In reviewing your response to the AO, the Board concurred as well with the further review of the AO, finding that your response to the original AO did not contain any new medical evidence. Accordingly, based on its careful review of your contention, 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,

1/18/2022

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Executive Director
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