



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

■  
Docket No: 5009-21  
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.

A three-member panel of the Board, sitting in executive session, considered your application on 21 March 2022. 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 the 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). In addition, the Board considered the advisory opinion (AO) furnished by a qualified mental health professional dated 21 January 2022, which was previously provided to you. You were given 30 days in which to submit a response, and when you did not provide a response, your case was submitted to the Board for consideration.

On 24 December 1980, you reenlisted in the Marine Corps after serving over two years of prior honorable service. During the period from 17 September 1981 to 8 January 1982, you received three instances of nonjudicial punishment (NJP) for three periods of unauthorized absence (UA), drunk and disorderly conduct, and three specifications of breaking restriction. On 5 February and March 1982, you were convicted by summary court-martial (SCM) of wrongful possession of marijuana paraphernalia, losing your military identification card, failing to go to your appointed place of duty, and wrongful possession of marijuana and drug paraphernalia. On 7 June 1982, your commanding officer provided a Statement of Performance that stated, in part, that based on your lack of desire to control your use of marijuana, you had no place in the Marine Corps, and recommended you be separated from the service. On 22 June 1982, you were

notified of administrative discharge action by reason of misconduct due to frequent involvement of a discreditable nature with military authorities. After being advised of your procedural rights, you elected to waive your right to have your case heard by an administrative discharge board. On 22 July 1982, you received NJP for two specifications of UA totaling 15 days, and throwing rocks breaking two windows. On 3 August 1982, your case was forwarded to the separation authority recommending you receive an other than honorable (OTH) discharge. On 19 August 1982, a staff judge advocate reviewed your case, finding it sufficient in law and fact. On 23 August 1982, the separation authority directed that you receive an OTH discharge. On 15 February 1983, you were discharged from the Marine Corps with an OTH characterization of service.

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 Traumatic Brain Injury (TBI) during your service. The AO noted that based on the available evidence, there was insufficient objective evidence of psychological/behavioral markers to support your contention of PTSD, TBI, or other mental health condition incurred as a result of your military service, or that your in-service misconduct could be attributed to psychological/behavioral changes from PTSD, TBI, or other mental health condition.

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 statement that: "Because I waited 27 years to come up with this ridiculous determination? If I had died a year prior, would you have changed it then? This is unacceptable, and this will be change." Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your misconduct that resulted in four NJPs and two SCM convictions involving drugs outweighed these mitigating factors. The Board also concurred with the AO that based on the available evidence, there was insufficient objective evidence of psychological/behavioral markers to support your contention of PTSD, TBI, or other mental health condition incurred as a result of your military service, or that your in-service misconduct could be attributed to psychological/behavioral changes from PTSD, TBI, or other mental health condition. 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,

3/25/2022

