



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

█  
Docket No: 5028-21  
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 10 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, the documents you submitted in rebuttal, and a subsequent AO.

You enlisted and began a period of active duty in the Marine Corps on 28 May 1980. On 23 February 1981 you received nonjudicial punishment (NJP) for failure to obey a lawful order in violation of Article 92, Uniform Code of Military Justice (UCMJ). Your second NJP occurred on 1 October 1981 for disrespect towards a Sergeant, for making a threatening gesture, and for being dressed in an improper uniform while standing duty in violation of Articles 91, 117, and 134, UCMJ. You were awarded a Meritorious Mast on 9 February 1982 for outstanding performance during an inspection. On 23 April 1983 you received a third NJP for wrongful use of marijuana as determined by a urinalysis test in violation of Article 134, UCMJ. You were notified of administrative separation processing by reason of misconduct and waived your procedural rights on

16 June 1983. On 7 July 1983 you were discharged with an other than honorable characterization of service.

You contend you were coerced into making statements regarding your discharge. You state your superiors misinformed you and your career could have been continued. You further state you are requesting an upgrade to your characterization of service so you may receive Department of Veterans Affairs (VA) medical benefits and on your application note that PTSD and mental health are related to your request. You contend proper procedures and protocols were not followed, you were an excellent and proud Marine, and you excelled in every aspect. You also state you were basically turned into an example for one instance.

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 there was insufficient evidence you incurred PTSD or another mental health condition during your military service. Consequently, the AO concluded that there was insufficient evidence that your misconduct could be attributed to symptoms of PTSD or another mental health condition. In its deliberations, the Board considered the medical documentation you provided; however, concurred with the AO. 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 three NJPs, outweighed these mitigating factors. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief. Furthermore, the Board noted you did not provide any post-service documentation or advocacy letters in support of your request for an upgraded characterization of service. Additionally, whether or not an individual is entitled to veterans' benefits is a matter under the cognizance of the VA. You may contact the nearest office of the VA concerning your right to apply for benefits. If benefits have been denied, you may be able to appeal the denial under procedures established by the VA.

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,

1/11/2022

[REDACTED]  
Executive Director  
[REDACTED]

[REDACTED]