



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: 5066-21
12317-11
Ref: Signature Date



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 5 January 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 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 an advisory opinion (AO) from a qualified mental health professional dated 8 November 2021, which was previously provided to you.

The Board determined that your personal appearance, with or without counsel, would not materially add to their understanding of the issues involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 10 August 1973. On 23 January 1974, you received non-judicial punishment (NJP) for failure to go at the time prescribed to your appointed place of duty. On 6 August 1975, you were convicted by special court-martial (SPCM) for an unauthorized absence from 26 February 1974 to 18 July 1975, totaling 507 days. As punishment, you were awarded confinement, reduction in rank, forfeiture of pay and a bad conduct discharge (BCD). After the BCD was approved at all levels of review, you were discharged on 2 June 1976.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 8 November 2021. The AO noted that you received a mental health evaluation by a military psychologist during your service, in which you denied any symptoms. Unfortunately, that in-service evaluation was your best option to receive the mental health support that you contend was not provided. Additionally, you provided post-service documentation that was more than forty years after your discharge that you were experiencing symptoms of PTSD in service, which contributed to your decision to go UA. While your service record supports your post service contention that you were experiencing significant physical pain and personal stress, your in-service statements that you desired separation due to greater financial and family opportunities bear more weight than your current statements that your continued UA was due to fear of the consequences of your misconduct. As such, it is difficult to attribute your misconduct to PTSD avoidance symptoms. The AO concluded by opining that there is some post-service evidence that you may have incurred PTSD during your military service, but there is insufficient evidence that your misconduct should be mitigated by a mental health condition such as PTSD.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contentions that: 1) there was an injustice; 2) your experience in the Marine Corps was traumatic, and the trauma affects your mind daily; 3) you went through an ordeal involving your surgeries, something you did not think you would live through; 4) before your surgeries you had been ganged up on, stabbed in your left rib cage and you believe it also led to your PTSD; 5) you were not allowed to board the bus to return to your duty station because you could not find your ticket and this cause you to be AWOL; and 6) after watching a movie in which an Army Soldier was court-martialed and executed by a firing squad, you believed that you could be executed for your AWOL period. After careful consideration of the AO, submission of supporting documentation, and applying liberal consideration, the Board did not find an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service.

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 as previously discussed and your desire to upgrade your discharge character of service. Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your NJP and SPCM conviction and subsequent BCD, outweighed these mitigating factors. Accordingly, given the totality of the circumstances, the Board determined 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,

1/19/2022

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Executive Director

Signed by: █