

DEPARTMENT OF THE NAVY

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

> Docket No: 5491-21 Ref: Signature Date

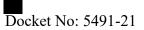


Dear Petitioner:

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 limitation 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 November 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 an advisory opinion (AO) from a qualified mental health professional dated 25 October 2021.

You enlisted in the Marine Corps and began a period of active duty on 3 September 1975. During the period from 30 April 1976 to 17 November 1977, you received three instances of non-judicial punishment (NJP). Your offenses were being absent from your appointed place of duty on four occasions, disobedience of a lawful order, failure to obey a lawful order and unauthorized absence on three occasions totaling 41 days. On 10 January 1978, you were convicted by summary court-martial (SCM) of willfully disobeying a lawful order, failure to go to your appointed place of duty, and an unauthorized absence totaling 25 days.



On 4 February 1978, you were notified that you were being recommended for administrative discharge from the Marine Corps in compliance with the Expeditious Discharge Program. You were advised of, and waived, your procedural right to consult with military counsel. On 6 February 1978, your commanding officer (CO) recommended to the separation authority that you be administratively discharge from the Marine Corps with a general (under honorable conditions) characterization of service. Unfortunately, the separation authority's decision document is not in your official military personnel file (OMPF). Notwithstanding, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary (as is the case at present), will presume that they have properly discharged their official duties.

Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), it appears that on 14 February 1978, you were discharged from the Marine Corps with a characterization of service of "Under Honorable Conditions," reason and authority was "JFG8" which is defined as "Expeditious Discharge Program – Involuntary," and reenlistment code was "RE-3C."

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 25 October 2021. The AO concluded by opining that the preponderance of objective evidence established you suffered from PTSD which incurred in your military service, and that some of your in-service misconduct (that which occurred after a January 1977 accident you were in, in which a freighter and overturned), could be attributed to your experience of PTSD.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contention that you served your country and the Marine Corps honorably, but did not receive proper treatment for your PTSD after surviving a tragic boat accident. After careful consideration of the AO, your statement, and your submission of supporting documentation, even under the liberal consideration standard, the Board discerned no procedural defect, impropriety, or inequity in your discharge and determined your misconduct warranted a general (under honorable conditions) character of service. The Board concluded that there was insufficient evidence demonstrating a linkage between your misconduct and your PTSD, specifically, the misconduct that occurred prior to January 1977, for which you received two instances on NJP. The Board, applying liberal consideration, did not find evidence of an error or injustice that warrants upgrading your 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 contention as previously discussed and your desire to upgrade your discharge character of service. The Board noted that characterization of service is based in part on conduct marks assigned on a periodic basis. Your conduct mark average was 3.9. At the time of your service, a conduct mark average of 4.0 was required to be considered for a fully honorable characterization of service.

Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced

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by three NJPs, a SCM conviction, and failure to attain the required conduct trait average, 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,
11/30/2021

Executive Director
Signed by: