



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

█  
Docket No: 5549-21  
5446-17  
Ref: Signature Date

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█  
█

Dear █:

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 14 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 the advisory opinion (AO) furnished by a qualified mental health provider which was previously provided to you and the documents you submitted in rebuttal.

You enlisted and began a period of active duty in the Marine Corps on 20 October 1976. Your service record indicates you were in an unauthorized absence (UA) status from 7 May 1979 to 3 October 1979, and from 4 November 1979 to 15 July 1980 for a total period of 424 days. On 18 November 1985 you were separated from the Marine Corps with a bad conduct discharge as the result of a special court-martial (SPCM) conviction. Although your service record is incomplete and does not contain the documentation pertaining to your SPCM, the Board relies on a presumption of regularity to support the official actions of public officers. In the absence of substantial evidence to the contrary, the Board will presume that the public officers have properly

discharged their official duties. Your contentions, unsupported in the record or by submission of documentation, failed to overcome that presumption.

You contend there are no facts or circumstances surrounding your discharge and that someone has tampered with your service record. You state you are requesting an upgrade to your characterization of service so that a decision can be rendered regarding your disability claim. You further contend that the stress of not being able to receive assistance as a veteran has sent you back into deep depression and triggered "post trauma."

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 that the Department of Veterans Affairs (VA) records reported post-service mental health diagnoses. However, the information made available did not provide enough markers to establish an onset and development of mental health symptoms or identify a nexus with your misconduct. Consequently, the AO concluded there was insufficient evidence to attribute your misconduct to PTSD or a 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 SPCM, 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 information regarding the circumstances surrounding your periods of UA. 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,

1/24/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]