



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: 5601-21
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 4 February 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.

You enlisted and began a period of active duty in the Marine Corps on 25 July 1975. On 14 December 1976 you were convicted by special court martial (SPCM) of two specifications of unauthorized absence (UA) for an eleven and one day period, and seven specifications of failure to obey a lawful order by not signing restriction papers in violation of Articles 86 and 92, Uniform Code of Military Justice (UCMJ). You were convicted by summary court martial (SCM) on 22 February 1978 of three specifications of UA for being absent for a one hour period and two, one day periods in violation of Article 86, UCMJ. You were convicted by a second SCM on 2 March 1979 of three specifications of disrespect toward a Staff Sergeant (SSgt) by treating him with contempt by making an inappropriate remark, calling his mother and sister derogatory names, and swinging at

him with a closed fist; failing to pay for your chow hall meal; and communicating a threat to the SSgt in violation of Articles 91, 92, and 134, UCMJ. On 13 August 1981, your chain of command favorably endorsed your reenlistment waiver based on your high proficiency and conduct marks from 31 July 1979 to 31 July 1981. Your reenlistment waiver was approved by Headquarters Marine Corps and you began your second period of active duty on 14 November 1981. However, on 27 September 1983 you were convicted at a second SPCM of two specifications of wrongful possession of marijuana with the intent to distribute, two specifications of wrongful distribution of marijuana, one specification of wrongful use of marijuana, and one specification of wrongful possession of marijuana in violation of Article 134, UCMJ. You were sentenced to reduction to the grade of Private (E-1), forfeiture of \$200 pay for three months, confinement at hard labor for 100 days, and a bad conduct discharge. You were so discharged on 7 August 1984.

You contend you served from 1974 to 1981, were honorably discharged, and reenlisted in 1981. You state you are requesting this correction in order to apply for disability compensation for PTSD and that the condition caused you to make bad decisions that led to your discharge.

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 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 there is no in-service or post-service medical record that you were diagnosed with PTSD or another mental health condition. Consequently, the AO concluded that there is insufficient evidence that you incurred PTSD or another mental health condition during military service, and there is insufficient evidence that your misconduct could be attributed to PTSD or another mental health condition. Based upon their 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. In making their determination, the Board concluded that the seriousness of your misconduct, that formed the basis for your BCD, outweighed the mitigation evidence you provided. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

Regarding Department of Veterans Affairs (VA) benefits, the Board noted that you may qualify for VA benefits based on your first enlistment. However, 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, _____
2/8/2022

[REDACTED]

Executive Director

Signed by: [REDACTED]