



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: 6531-21
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 24 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 the 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 and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice or clemency determinations (Wilkie Memo). Additionally, the Board also considered the advisory opinion (AO) furnished by qualified mental health provider, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

You enlisted in the United States Marine Corps and began a period of active duty on 6 September 1977. On 20 July 1978, you received nonjudicial punishment (NJP) for being in an unauthorized absence (UA) status from your appointed place of duty and for being disrespectful in language. On 15 March 1979, you were found guilty at a special court-martial (SPCM) of a period of UA totaling approximately 179 days until you surrendered. You were sentenced to confinement at hard labor for one (1) month and to be reduced in rank to E-1. On 14 March 1980, you were charged with disobeying a lawful order and unlawfully possessing marijuana. You submitted a request for discharge for the good of the service in lieu of trial by court-martial on 26 March 1980. Your commanding officer favorably endorsed your request, adding “[Petitioner] is a chronic poor performer and cannot be trusted. His removal from the military service will greatly benefit this command.” Your request was approved and on 11 April 1980, you were discharged with an other than honorable characterization of service for the good of the service in lieu of trial by court-martial.

As part of the Board's review, a qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO regarding your assertions that you were diagnosed with schizoaffective disorder as a result of years of childhood abuse and the traumatic event of your father's car accident. You further contend your diagnosis prevented you from properly making decision. Lastly, you contend during your service you received several letters of recognition as a result of your professionalism, maturity, outstanding performance and enthusiasm.

The AO noted your limited service record contained no diagnosis of a mental health condition and you provided no post-service evidence that you incurred an unfitting mental health condition in service. The AO opined, based on the current available evidence, there is insufficient evidence that you may have incurred an unfitting mental health condition during your military service and that your misconduct could be attributed to a mental health condition.

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. However, the Board noted aside from medical documents, newspaper articles of your father's car accident, and character letter dated 1980, you did not submit current advocacy letters or post-service documents to be considered for clemency purposes. Based upon this review, including the findings of the AO, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJP and SPCM, outweighed these mitigating factors due to the seriousness of your offenses. In particular, the Board noted your relatively brief period of service that consisted of multiple incidents of misconduct and included wrongful possession of a controlled substance. In the end, the Board concluded that your conduct was a serious departure from that expected of a Marine and supports your Other than Honorable characterization of service. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

You are entitled to have the Board reconsider its decision upon the 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,

2/9/2022

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Executive Director

Signed by: █