

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

> Docket No: 6549-21 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 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 16 March 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 16 December 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 entered active duty with the Marine Corps on 17 May 1988. During the period from 21 June to 14 November 1989, you received two instances of non-judicial punishment (NJP) for unauthorized absence (UA) totaling 30 days and uttering worthless checks. On 9 May 1990, a summary court-martial (SCM) convicted you of two specifications of wrongfully appropriating an ID card from another Marine and two specifications of falsely uttering a check with intent to defraud. Subsequently, you were notified of pending administrative separation action by reason of misconduct due to a pattern of misconduct.

After you waived your procedural rights, your commanding officer (CO) forwarded your package to the separation authority (SA) recommending your discharge by reason of misconduct due to a pattern of misconduct, with an other than honorable (OTH) characterization of service. The SA approved your CO's recommendation and on 31 July 1990, you were so discharged.

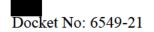
As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 16 December 2021. The AO stated in part that based on the current available evidence, there is insufficient evidence that you may have incurred an unfitting mental health condition or PTSD during military service, and there is insufficient evidence that your misconduct could be mitigated by an unfitting 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 desire to upgrade your discharge and contentions that: (a) you were experiencing a mental health condition due to being away from your family for the first time; and (b) you faced harassment and intimidation from other Marines, you were young and immature, and since discharge, you earned your Bachelor Degree, started ministering to the youth and currently working as a federal contractor. Unfortunately, after careful consideration of the AO, your failure to submit 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 noted that there is no evidence in your record, and you submitted none, to support your contention of facing harassment and intimidation from other Marines. The Board also noted that the evidence of record did not show that you were not responsible for your conduct or that you should not be held accountable for your actions. Lastly, the Board noted while commendable, your post service conduct does not excuse your conduct while enlisted in the Marine Corps or the basis for your discharge.

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 two NJPs and SCM conviction, outweighed the potential mitigating factors. As a result, when weighing the seriousness of your misconduct against the brevity of your active duty service, the Board concluded that the preponderance of the evidence supports a finding that your conduct was a significant departure from that expected from a Marine and merits an Other than Honorable characterization of service. 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,

