



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: 6596-21
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 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 26 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 an advisory opinion (AO) from a qualified mental health professional dated 1 December 2021 along with your response to the AO.

You entered active duty with the Marine Corps on 26 November 1970. During the period from 4 January 1971 to 18 April 1972, you received two non-judicial punishments (NJP) for assault, disrespect to a superior commissioned officer, and disobeying a lawful order. On 5 September 1973, a special court-martial (SPCM) convicted you of unauthorized absence (UA) totaling 150. You were sentenced to confinement for 75 days, forfeiture of pay, reduction to E-1, and a bad conduct discharge (BCD). After the BCD was approved at all levels of review, on 10 September 1974, 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 1 December 2021. The AO stated in part, based on the current available evidence, that there is insufficient evidence that you incurred a mental health condition during military service and that your misconduct could not 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 desire to upgrade your discharge based on an argument of immaturity and that you incurred a mental health condition from your childhood and wartime experiences.

Unfortunately, after careful consideration of the AO and your response to it, your submission of 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.

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 SPCM conviction, outweighed the potential mitigating factors. As a result, when weighing the seriousness of your misconduct against your active duty service, the Board concluded that the preponderance of the evidence supports your BCD. 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,

2/4/2022

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Executive Director

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