



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: 6618-21
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.

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.

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 28 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.

You enlisted and began a period of active duty in the Marine Corps Reserve on 19 October 1976. You completed your reserve training and were separated with an honorable characterization of service on 23 April 1977. You began a period of reserve duty on 24 April 1977 and were joined to your unit on 8 May 1977. Your Reserve Retirement Credit Report indicates that you completed 14 drill periods during the period of 20 October 1976 to 19 October 1977. On 5 January 1978 you were notified by certified mail of administrative separation processing by reason of misconduct

based upon an established pattern of shirking. The notification stated that an Administrative Discharge Board (ADB) was scheduled to convene on 5 February 1978 to consider your case and that your commanding officer (CO) was recommending you receive an under other than honorable conditions characterization of service. The notification also indicated that failure to respond by 5 February 1978 would result in waiver of your procedural rights and that the CO's recommendation would be forwarded to the separation authority without referral to an ADB. The receipt for certified mail was not returned to the command. On 9 February 1978 the CO recommended that you be discharged from the Marine Corps Reserve with a general (under honorable conditions) characterization of service based on substandard behavior for the convenience of government. On 19 May 1978 Headquarters Marine Corps directed your separation with a general (under honorable conditions) characterization of service and further directed you be reduced to the grade of Private prior to effecting your discharge. You were so discharged on 14 June 1978.

You contend you were injured in 1977 and were discharged honorably. You state the error is that you joined as a 2542 (communication center man) but that when you returned home you were no longer a 2542. You contend you should have been discharged as a private first class (PFC) and that the Commandant promoted you from an airplane. You state you constantly asked to return because you wanted to join your platoon. You further state you had a top security clearance. You contend you returned to your original home, got shot, and this ruined your career. You further contend you developed mental and physical illnesses due to this situation and you are disabled.

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 in-service, there is no evidence that you were diagnosed with a mental health condition and there is insufficient information regarding post-service mental health diagnoses to attribute your in-service performance to a mental health condition. Consequently, the AO concluded that there is insufficient evidence that you incurred an unfitting mental health condition during military service, and there is insufficient evidence that your in-service performance could be attributed to an unfitting 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 unsatisfactory participation, as evidenced by your service record, 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 your application did not include detailed information regarding the details of why you did not complete your obligation. 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,

2/7/2022

[REDACTED]

Executive Director

[REDACTED]