



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

██████████
Docket No: 7849-21
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 13 May 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, and your response.

You enlisted and began a period of active duty in the Marine Corps on 26 July 1974. On 9 April 1975, you received nonjudicial punishment for four specifications of unauthorized absence (UA) ranging from one hour to two days in violation of Article 86, Uniform Code of Military Justice (UCMJ). You received a second NJP, on 4 December 1975, for two specifications of Article 86, UCMJ for being absent from firewatch. On 4 December 1975, you were also formally counseled concerning a poor attitude and substandard performance of duty. You entered a period of UA between 12 January 1976 and 20 January 1976 for a total of four days. On 15 March 1976, you were formally counseled concerning administrative separation processing and you did not object to the discharge. On 16 April 1976, you were discharged with a General (Under Honorable Conditions) characterization of service.

You contend that while stationed at ██████████ Marine Corps Air Station you were assaulted by your company Lieutenant and other officers in your unit and ended up at ██████████ Naval Hospital. You state you were eventually transferred to a Naval Hospital in ██████████. You further contend that while in the hospital you were medicated and depressed, with no sense of direction or what had happened to you at your duty station. You state all you remember is being told to keep your mouth shut and if you didn't, it would get worse. Additionally, you state you believe the assault was a result of racially motivated hate towards you and you kept quiet for many years because you were embarrassed and afraid to say anything prior to discharge. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

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 in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health disorder in service. Post-service, he has been granted service connection by the VA for unknown diagnoses. Unfortunately, the Petitioner's statement does not provide sufficient detail to determine a nexus with his misconduct. Additional records (e.g., the complete VA mental health record listing the Petitioner's diagnoses, symptoms, onset, and their specific link to his misconduct) are required to render an alternate opinion.

The AO concluded, "[b]ased on the available evidence, it is my medical opinion that there is insufficient evidence that the Petitioner may have incurred PTSD or another mental health condition during military service. There is insufficient evidence that his misconduct could be attributed to PTSD or another mental health condition."

The Board also considered your response the AO in which you assert that you have no way of confirming the incidents that occurred prior to 1975 and requested additional documentation to support your case. However, you did not provide any additional documentation in support of your petition prior to the expiration of the comment period.

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 misconduct, as evidenced by your two NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and weighed it against your relatively brief period of active duty service. As a result, the Board concluded there are significant negative aspects of your service that outweigh the positive aspects and it continues to warrant a General (Under Honorable Conditions) characterization. After applying liberal consideration, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting clemency in the form of an upgraded characterization of service. Accordingly, given the totality of the circumstances, the Board determined that your request does not merit relief.

