

DEPARTMENT OF THE NAVY

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

> Docket No: 8089-21 Ref: Signature date



Dear

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 the entire record, the Board for Correction of Naval Records (Board) found the evidence submitted was 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 9 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 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, 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). In addition, the Board considered the advisory opinion (AO) furnished by a qualified mental health professional dated 25 February 2022, which was previously provided to you. You were given 30 days in which to submit a response. When you did not provide a response, your case was submitted to the Board for consideration.

Regarding your request for a personal appearance via video or telephone, the Board determined that a personal appearance with or without counsel will not materially add to their understanding of the issue(s) involved. Therefore, the Board determined that a personal appearance was not necessary and considered your case based on the evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 25 October 1978. On

22 November and 20 December 1978, you received nonjudicial punishment (NJP) for being disrespectful in deportment, dereliction of duty, and disobedience. During the period of 8 October 1979 to 21 January 1981, you had two periods of unauthorized absence (UA) totaling 451 days. On 5 March 1981, you submitted a written request for an undesirable discharge for the good of the service in order to avoid trial by court-martial for the above periods of UA. Prior to submitting this request for discharge, you conferred with a qualified military lawyer, were advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. Subsequently, your request for discharge was granted and, on 30 March 1981, you received an Other Than Honorable (OTH) discharge in lieu of trial by court-martial. As a result of this action, you were spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor.

A qualified mental health professional reviewed your request for correction to your record and provided the Board with an AO regarding your assertion that you was suffering from Post-Traumatic Stress Disorder during your service. The AO noted in pertinent part:

There is no evidence that the Petitioner was diagnosed with a mental health condition during military service. He has provided no post-service medical evidence to support his claims. While it is possible that his misconduct could be related to unrecognized PTSD avoidance symptoms, it is difficult to establish a nexus with his misconduct, given the limited information regarding his purported traumatic events in service. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, 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 clinical opinion that there is insufficient evidence that the Petitioner may have incurred PTSD during military service. There is insufficient evidence that his misconduct could be attributed to PTSD."

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 statement that you had orders to go to but they were taken and you were sent back to but the same Battalion. Further, that you previously received NJP at the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs and two lengthy periods of UA, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and determined that it showed a complete disregard for military authority and regulations. Further, the Board also determined that you already received a large measure of mitigation when the Marine Corps agreed to accept your request to be discharged in lieu of trial by court-martial. Finally, the Board concurred with the AO that insufficient evidence exists to conclude that your misconduct could be attributed to PTSD. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH 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.

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.

~.

1

Sincerely,	
	5/14/2022
Executive Director	
Signed by:	