



**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: 275-22  
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 2 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 31 January 2022 and your response to the AO.

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 20 June 1988. Despite your assertions to the contrary, your record documents that you went into an unauthorized absence (UA) status on 21 June 1989 and remained absent until apprehended on 7 May 1992, totaling 1,199 days. As a result, in June 1992, you submitted a written request for discharge for the good of the service to avoid trial by court-martial. Prior to submitting this request, you conferred with a qualified military lawyer, at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. Your request was granted and your commanding officer was directed to issue an other than honorable (OTH) discharge for the good

of the service. As a result of this action, you were spared the stigma of a court-martial conviction, as well as the potential penalties of such a punitive discharge. On 10 July 1992, 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 31 January 2022. The AO stated in part that based on the available evidence, that there is insufficient evidence that you may have incurred an unfitting mental health condition during military service. There is insufficient evidence that your misconduct could be attributed to 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 contention that you were suffering from Post-Traumatic Stress Disorder (PTSD), as well as other mental health issues, and these diagnoses might have mitigated the misconduct that led to your OTH discharge. Further, the Board considered your post-discharge history of employment and accomplishments. Unfortunately, despite applying liberal consideration, after careful consideration of the AO and your rebuttal, 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 lengthy period of UA and request for a good of the service discharge, outweighed the potential mitigating factors. Ultimately, despite the mitigation evidence you provided, the Board felt your long-term UA was too serious to be offset sufficiently to merit an upgrade to your characterization of service despite liberal consideration under the applicable policies. 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 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,

3/9/2022

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