



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

█  
Docket No. 0849-22  
Ref: Signature Date



Dear Petitioner:

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 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 Board waived the statute of limitation 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 22 December 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, 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)/mental health condition (MHC) (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 reviewed an Advisory Opinion (AO) from a qualified mental health professional along with your response to the AO.

You enlisted in the U.S. Marine Corps and began a period of active duty on 2 December 1974. In July 1975, you were counselled on alcohol abuse and frequent involvement with civilian authorities. On 29 July 1975, you were apprehended by █ Police for public drunkenness and carrying a concealed weapon. On 27 January 1976, you were issued administrative counseling concerning your frequent involvement of a discreditable nature with civil authorities. On 22 March 1976, you received nonjudicial punishment for action prejudicial to good order and discipline/disorderly conduct. On 3 May 1976, you were notified of your pending administrative separation by reason of unfitness due to your frequent involvement with military authorities, at which time you waived your right to submit a statement and did not object

to your discharge. The notification documented that you received two additional NJPs during your enlistment for unauthorized absences (UAs). On 11 May 1976, the separation authority directed you be separated with a General (Under Honorable Conditions) (GEN) characterization of service. On 11 May 1976, you were so discharged.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to upgrade your discharge and your contentions that, (1) you incurred mental health concerns during your service as a result of abuse you witnessed and experienced during boot camp, including threats to your life, which caused you to get into fights and abuse alcohol and drugs, and (2) you were never offered treatment of any kind during service. For purposes of clemency and equity consideration, the Board noted you provided medical documentation.

Based on your assertions that you incurred mental health concerns (MHC) during military service, which might have mitigated the circumstances surrounding your separation from service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with the AO. The AO stated in pertinent part:

Petitioner was appropriately referred for psychological evaluation and properly evaluated during his enlistment. His personality disorder diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. A personality disorder diagnosis is pre-existing to military service by definition, and indicates a lifelong characterological traits unsuitable for military service. Post-service, he has received a diagnosis of depression that is temporally remote to his military service, the symptoms of which do not appear to have been interfering during his military service. His in-service misconduct appears to be consistent with his diagnosed personality disorder, rather than evidence of another mental health condition.

The AO concluded, “it is my considered clinical opinion there is insufficient evidence of a diagnosis of a mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to a mental health condition, other than his diagnosed personality disorder.”

In response to the AO, you provided additional documents to include a personal statement, a photograph, an advocacy letter, and newspaper article.

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your three NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board noted your statements in which you admitting to abusing drugs during your active duty service. The Board determined that illegal drug use by a service member is contrary to military core values and policy, renders such members unfit for duty, and poses an unnecessary risk to the safety of their fellow service

members. Finally, the Board concurred with the AO that there is insufficient evidence of a diagnosed mental health condition that may be attributed to military service or your misconduct. 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. Even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants granting you the relief you requested or granting relief as a matter of clemency or equity. 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 the 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 is attached 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,

1/25/2023

