



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: 1203-22
Ref: Signature Date



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 13 June 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, which was previously provided to you. Although you were afforded an opportunity to submit a rebuttal, you did not do so.

You enlisted in the U.S. Marine Corps and began a period of active duty on 25 January 1977. On 21 July 1978, you received your first nonjudicial punishment (NJP) for two specifications of failing to obey a lawful order. On 22 September 1978, you received your second NJP for a period of unauthorized absence (UA) totaling 10 days until you surrendered. Pursuant to this NJP, you received administrative remarks in your official military personnel file (OMPF) regarding your substandard performance of duty, poor conduct, attitude, and lack of motivation. You were also advised further involvement with military authorities could result in disciplinary action. On

30 October 1978, you received a third NJP for being UA from your appointed place of duty. On 2 May 1979, your additional misconduct led to your being found guilty at a Summary Court-Martial (SCM) of two specifications of UA lasting a total of 74 days until you were apprehended. You were sentenced to confinement at hard labor for two month, forfeiture of \$75.00 pay per month for six month, and reduction in rank to E-1. On 8 June 1979, the Convening Authority approved all but confinement at hard labor in excess of 38 days, which was suspended for six months. On 21 August 1979, you received additional administrative remarks concerning your conduct, personal appearance, lack of motivation, and promptness in reporting to his appointed place of duty. On 5 November 1979, you commenced another period of UA totaling 248 days which lasted until you were apprehended. On 29 July 1980, you submitted a request for discharge with an Other Than Honorable (OTH) characterization of service for the Good of the Service to escape trial by court-martial. On 14 August 1980, your request was approved and, on 21 August 1980, you were discharged with an OTH for the Good of the Service.

The Board carefully considered all potentially mitigating factors in your petition 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 contentions that you incurred PTSD and other mental health conditions during military service, which might have mitigated your discharge character of service. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

In connection with your assertion that you suffered from PTSD, the Board requested, and reviewed, the AO. The AO reviewed your service record as well as your petition and the matters that you submitted. The AO stated in pertinent part:

Among available records, there is no evidence of a mental health diagnosis in military service. While he did have an unexplained medical issue at the start of this military service, it appears to have resolved about a year before he began to have disciplinary troubles. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Unfortunately, he was provided no medical evidence in support of his claim. His personal statement is insufficient detailed the Petitioner's diagnosis and symptoms in service, or records detailing his misconduct) would aid in rendering an alternate opinion.

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

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 three NJPs and SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. Further, the Board concurred with the AO

that there is insufficient evidence that your misconduct could be attributed to PTSD or another mental health condition. 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.

Sincerely,

7/1/2022

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Executive Director
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