

DEPARTMENT OF THE NAVY

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

> Docket No: 1240-22 Ref: Signature Date

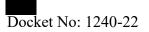


Dear Petitioner:

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 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 1 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)/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). The Board also considered an advisory opinion (AO) from a qualified mental health professional dated 14 April 2022, which was previously provided to you.

After a period of honorable service in the US Army, you entered active duty with the Marine Corps on 11 December 1975. During the period from 26 July to 13 December 1976, you received five non-judicial punishments (NJP) for two specifications of absent from appointed place of duty, two specifications of unauthorized absence totaling five days, and failure to go to appointed place of duty. On 17 December 1976, civil authorities charged you with possession of marijuana with intent to sell. On 21 March 1977, you received NJP for failure to go to appointed place of duty and absence from appointed place of duty. On 13 July 1977, civil authorities convicted you of failure to return a rental car. You were sentenced to confinement for six months, restitution, fine, court-cost, and two years' probation. Subsequently, you were notified



of pending administrative separation action by reason of misconduct due to civil conviction. You elected to consult with legal counsel and requested an administrative discharge board (ADB). However, on 13 July 1977, civil authorities convicted you and sentenced you to confinement for six months confinement, probation, and court cost. During the period from 21 to 31 August 1977, you received two additional NJPs for Unauthorized Absence and absence from appointed place of duty. On 12 October 1977, the ADB found that you committed misconduct due to civil convictions and recommended you receive an Other Than Honorable (OTH) characterization of service. The separation authority (SA) concurred with the ADB and directed an OTH discharge by reason of civil conviction. On 28 October 1977, you received another NJP for absence from appointed place of duty and on 9 November 1977, you were so discharged.

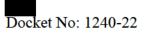
The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Wilkie Memo. These included, but were not limited to your desire to upgrade your discharge and contentions that you incurred a mental health condition during military service, which contributed to your misconduct, you were young and made a mistake, served honorably in the service, and was stationed in the service of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 14 April 2022. The AO stated in pertinent part:

Among the available records, there is no evidence that the Petitioner was diagnosed with a mental health condition during military service. Throughout his military processing, there were no concerns raised of a mental health condition that required evaluation. Unfortunately, he has provided no medical evidence in support of his claims. His current statement is temporally remote from military service and insufficient for a clinical diagnosis. Additional records (e.g., postservice medical records describing the Petitioner's diagnosis, symptoms, 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 of a diagnosis of PTSD or another mental health condition that could 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 your misconduct as evidenced by your nine NJPs and two civil convictions, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that your conduct showed a complete disregard for military authority and regulations. In addition, 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 was a significant departure from that expected from a Marine and continues to merit an



OTH characterization of service. 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 your request does not merit relief.

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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.

