



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

[REDACTED]
Docket No: 1378-22
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 22 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 dated 2 May 2022, which was previously provided to you.

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 24 January 1979. During the period from 12 July 1979 to 3 October 1980, you received five non-judicial punishments (NJP) for absence from appointed place of duty, four specifications of disobeying a lawful order, disrespectful in language toward a noncommissioned officer, resisting apprehension, and interfering with the duties of a military police. On 4 December 1980, you submitted a written request for discharge for the good of the service (GOS) to avoid trial by court-martial due to six specifications of writing bad checks knowing the funds were not available.

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 24 December 1980, 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. The AO stated in pertinent part:

There is no evidence that Petitioner was diagnosed with a mental health condition in military service. Throughout Petitioner's disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence in support of his claims. Unfortunately, his personal statement, while consistent with statements in his record regarding the death of his mother, is not sufficiently detailed to establish a clinical diagnosis or provide a nexus with his misconduct, the majority of which occurred prior to his mother's death. It is also difficult to attribute financial mismanagement to a mental health condition. Additional records (e.g., mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to 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 mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to a 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 contentions that you developed a mental health condition (MHC) during your military service, that you were ignorant of banking procedures, that you contracted tuberculosis, that your mother had recently died, and you had to help younger siblings. For purposes of clemency consideration, 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 your misconduct, as evidenced by your five NJP and good of the service discharge request, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and determined 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 a mental health condition. Finally, the Board found no evidence to support any of your contentions. As a result, the Board concluded that your conduct constituted 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.

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,

7/4/2022

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Executive Director
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