



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: 1673-22
10109-16
0208-01
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 April 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 19 March 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 enlisted in the Marine Corps on 20 June 1976. During the period from 6 August 1980 to 17 September 1981, you received four instances of non-judicial punishment (NJP). Your offenses were willfully disobeying a lawful order issued by a noncommissioned officer (NCO), dereliction in the performance of duty, absence from appointed place of duty, disrespect in language, sleeping on post, and communicating a threat. On 24 June 1981, you were convicted by a summary court-martial (SCM) of two specifications of sleeping on post, disrespect toward a commissioned officer, and an unauthorized absence.

On 27 June 1983, you submitted a written request for separation in lieu of trial by court-martial for an unauthorized absence totaling 625 days. Prior to submitting this request, you conferred with a military lawyer at which time you were advised of your rights and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you admitted your guilt to the foregoing offense and acknowledged that your characterization of service upon discharge would be other than honorable (OTH). The separation authority approved your request and directed your commanding officer to discharge you with an OTH characterization of service, and on 1 July 1983, 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 19 March 2022. The AO noted that there is no evidence that you were diagnosed with a mental health condition during military service. Additionally, throughout your disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. Post-service, a civilian psychologist has purportedly attributed PTSD and other mental health conditions to military service, which the Department of Veterans Affairs (VA) has determined does not bar you from benefits. However, there are discrepancies in the record that require clarification. Specifically, the psychology report is unsigned and the purported traumatic incident occurred after you began your period of unauthorized absence. Unfortunately, given these discrepancies, there is insufficient information to establish a nexus with your misconduct. The AO concluded that additional records are required to render an alternate opinion, and stated that there is some post-service evidence of PTSD or another mental health condition that may be attributed to military service; however, there is insufficient evidence that your misconduct could be attributed to PTSD or another mental health condition. You provided a response to the AO that provided additional clarification of the circumstances of your case and a medical document dated 1 February 2021.

The Board carefully reviewed your application, weighed all potentially mitigating factors, and considered your contention that unknown at the time, you were suffering from an undiagnosed neurobehavioral conditions medically presumed to be caused by exposure to the contaminated water at Camp Lejeune. You further state that you have been currently diagnosed with PTSD, generalized anxiety disorder, major depressive disorder and obsessive-compulsive disorder. Unfortunately, after careful consideration of the AO, your submission of supporting documentation, and applying liberal consideration, the Board did not find an error or injustice that warrants granting clemency in the form of upgrading your characterization of service.

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 contention as previously discussed and your desire to upgrade your discharge character of service. Based upon this review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your four NJPs, SCM conviction, and 625 days of unauthorized absence, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded it showed a complete disregard for military authority and regulations. Additionally, the Board noted you received significant mitigation from being allowed to separate with an OTH character of service instead of risking greater punishment at a court-martial. As a result, the Board determined your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH characterization. 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,

4/28/2022

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Executive Director

Signed by: █