

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

> Docket No: 1829-22 Ref: Signature Date



Dear

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 the advisory opinion (AO) furnished by a qualified mental health professional dated 4 May 2022, and your response to the AO.

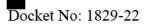
You enlisted in the Marine Corps and began a period of active duty on 30 December 1974. On 3 September 1975, you received non-judicial punishment (NJP) for two specifications of unauthorized absence (UA) and breaking restriction. On 9 September 1975, you received your second NJP for an orders violation. On 25 November 1975, you were evaluated and diagnosed with immature personality disorder. On 16 January 1976, you submitted a written request for separation for the good of the service in lieu of trial by court-martial for 10 specifications of UA, two specifications of disrespect toward a commissioned officer, willful disobedience of a lawful order from a commissioned officer, three specifications of willful disobedience of a lawful order from a noncommissioned officer, 15 specifications of willfully disobeying a lawful written order, and four specifications of breaking restriction. 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 offenses 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. As a result, you were spared the stigma of a court-martial conviction, as well as the potential penalties of a punitive discharge. On 11 February 1976, you were discharged from the Marine Corps with an OTH characterization of service by reason of Good of the 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 supporting documentation and your desire to upgrade your discharge character of service. The Board also considered your contention that you incurred an alcohol use disorder during your military service, which contributed to your misconduct. Additionally, you contend that your military lawyer presented papers to you for you to sign without explanation; you believed that the papers were meant for you to be released from the brig; however, you were discharged after signing the papers without explanation. For purposes of clemency consideration, the Board noted you provided advocacy letters that described postservice accomplishments.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 4 May 2022. The AO noted in pertinent part:

During military service, the Petitioner was diagnosed with a personality disorder, indicating lifelong characterological features rendering military service unsuitable to him. This diagnosis was based on observed behaviors and performance during his service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. Throughout his disciplinary processing, there were no concerns raised of another mental health condition that would have warranted a referral for evaluation. Unfortunately, he has provided no medical evidence to support his claims. His personal statement is not sufficiently detailed to establish a clinical diagnosis or provide a nexus with his misconduct. Additionally, problematic alcohol use is incompatible with military readiness and discipline considered amenable to treatment, depending on the individual's willingness to engage in treatment, and does not remove personal responsibility for actions. Additional records (e.g., post-service mental health records describing the Petitioner's diagnosis, symptoms, and their specific link to his misconduct) would aid in rendering an alternate opinion.

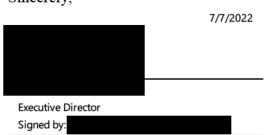
The AO concluded, "[b]ased on the available evidence, it is my clinical opinion that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence of another mental health condition, other than his pre-service personality disorder diagnosis, that he may have experienced during military service. There is insufficient evidence that his misconduct may be attributed to PTSD or another mental health condition."



In response to the AO, you provided a statement explaining the circumstances of your case that led to your alcohol abuse.

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 two NJPs and multiple violations of the Uniform Code of Military Justice (UCMJ) that subsequently led to your request for separation, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard of military authority and regulations. The Board also noted that the misconduct that led to your request for separation for the good of the service was substantial and, more likely than not, would have resulted in a punitive discharge and extensive punishment. As a result, the Board concluded you already received significant mitigation from being allowed to separate with an OTH character of service instead of risking greater punishment at a court-martial. Finally, the Board concurred with the AO and determined that there is insufficient evidence that your misconduct may be attributed to PTSD or another mental health condition. Based on these factors, the Board determined 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 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,