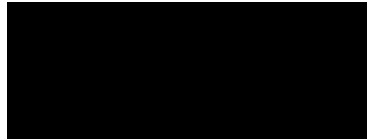




**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

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Docket No: 2191-22  
Ref: Signature Date



Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Title 10, United States Code, Section 1552. 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 Board waived the statute of limitation 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 15 July 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 the 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 SECDEF Memo of 3 Sep 14 (Hagel Memo), USD Memo of 25 Aug 17 (Kurta Memo), and USD Memo of 25 July 18 (Wilkie Memo). The Board also considered the advisory opinion (AO) of a qualified mental health provider dated 27 May 2022, which was previously provided to you. You were afforded an opportunity to submit a rebuttal but did not do so.

The Board determined that your personal appearance, with or without counsel, would not materially add to the understanding of the issues involved. Therefore, the Board determined a personal appearance was not necessary and considered your case based on evidence of record.

You enlisted in the Marine Corps and began a period of active duty on 3 March 1977. You accepted your first nonjudicial punishment (NJP) just over two months later for a violation of Article 91 by failure to obey a lawful order to smoke only when authorized. You were subject to three additional NJPs for unauthorized absences (UA), Article 86, from 2 – 6 September 1978, from 0900-2200 on 4 February 1979, and from 28 February – 5 March 1979. On 7 July 1979, you received emergency care for two 1-inch stab wounds approximately 2 inches from your spinal cord and for a swollen eye caused by a blow to your face. Your follow-up care on 19 July 1979 indicates removal of the sutures and progressive healing of blunt trauma. Two months

later, on 20 September 1979, you again absented yourself without authority and remained in a UA status. You were declared a deserter, on 30 October 1979, and remained so until formal notification of administrative discharge was sent to your home of record via certified mail on 12 October 1983. You did not respond to this notification and, on 19 October 1983, were determined to have waived your right to an administrative hearing. Following legal review of your proposed discharge, the Commandant of the Marine Corps directed your separation, on 23 February 1984, in absentia under Other Than Honorable (OTH) conditions for misconduct.

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 your contentions that you experienced overt racism during your military service, first from an officer who threatened to kill you, and later from a Marine who nearly murdered you in an unprovoked stabbing. Additionally, you assert that your injuries hindered your daily activities and that other Marines helped you hide then get a bus ticket home after the attack because you were denied convalescent leave, because you feared for your life, and because you heard about the attack on the radio and believed that authorities were “looking for you to lock you up.” For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Because you contend that post-traumatic stress disorder (PTSD) or another mental health (MH) disorder affected your discharge, the Board also considered the AO. The AO stated in pertinent part:

Petitioner’s service record is incomplete, however, it appears that he was separated in absentia following UA of more than four years. Among available records, there is no evidence that he was diagnosed with a mental health condition in military service. He has provided no medical evidence in support of his claims. Although his medical record does contain evidence of treatment for a stab wound, this injury occurred after he had completed four periods of UA. While it is possible that his final, extended UA could be due to avoidance of military reminders of a traumatic personal assault, it is difficult to make this attribution, given the history of UA established by the Petitioner prior to the injury. Additional records (e.g., post-service mental health records describing the Petitioner’s diagnoses, 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 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 NJPs, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the fact you deserted from the Marine Corps prior to your discharge. Further, the Board considered the likely negative impact your pattern of UAs had on the good order and discipline of your unit. Finally, the Board concurred with the

AO regarding the lack of evidence supporting your contentions, excepting your traumatic physical assault, and found the evidence of your assault insufficient to mitigate your final UA in light of your overall pattern of UAs prior to that experience. Therefore, the Board concluded 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 the 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 is attached 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,

7/27/2022

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