



**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: 2307-22  
Ref: Signature Date

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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 11 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 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta 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). As part of the Boards review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 9 May 2022. You were provided an opportunity to respond to the AO, but chose not to do so.

You enlisted in the U.S. Marine Corps (USMC) and began a period of active duty on 9 January 1979. On 10 January 1979, you provided a voluntary statement regarding your pre-enlistment police record which included shoplifting, assault, and burglary among other things. When you submitted your statement you also provided a █ Training School for Boys Fact Sheet/Admission Summary” which documented additional infractions as well as your education, psychological data, and a recommended plan. Documents in your official military personnel file (OMPF) also document multiple periods of unauthorized absences (UA) from 15 to 20 April 1979 (totaling 5 days), 21 to 30 April 1979 totaling (9 days), and 2 May to 8 June 1979 (totaling

37 days). On 22 June 1979, you were notified on your Commanding Officer's (CO) intent to recommend to the separation authority that you be discharged with an Other than Honorable (OTH) characterization of service by reason of fraudulent enlistment, at which time you waived your right to consult with counsel and have your case heard before an administrative discharge board (ADB). On 29 June 1979, a staff judge advocate's (SJA) review of your case found your proceedings were sufficient in law and fact. The SJA also recommended you be discharged with an OTH characterization of service. On 2 July 1979, you were discharged with an OTH by reason of fraudulent enlistment.

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 your recruiter knew of your juvenile, academic, psychiatric and mental health records prior to your enlistment, that your pre-existing mental health condition worsened during military service, and that it progressed as you aged. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

Based on your assertion that you incurred a mental health condition (MHC) during military service, which might have mitigated your discharge character of service, a qualified mental health professional reviewed your request for correction to your record and provided the Board with the AO. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, although there is evidence that antisocial behavior exhibited prior to military service continued during his military service. If his pre-service involvement with police authorities has been disclosed, it is unlikely that he would have been accepted into military service. He has provided medical evidence that is temporally remote to his military service of continued antisocial behavior following military service, and evidence that an unidentified mental health condition was not disabling prior to 1982. His in-service misconduct appears to be more consistent with his pre-service antisocial behavior, rather than evidence of a mental health condition incurred in or exacerbated by military service. Furthermore, it is difficult to consider how a mental health condition would account for his nondisclosure of criminal activity, mental health treatment, and educational limitations prior to entry into the USMC. 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 mental health condition that may be attributed to military service. There is insufficient evidence that his misconduct may be attributed to a 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 failure to disclose pre-service misconduct and periods of UA, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your unit. Further, the Board found no evidence to support your assertion that you informed your recruiter about your preservice history of misconduct. The Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. Your allegations, unsupported in the record or by submission of documentation, failed to overcome that presumption. Finally, the Board concurred with the AO that there is insufficient evidence that your misconduct may be attributed to a 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 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,

7/26/2022

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Executive Director

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