



**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: 2310-22  
1503-84  
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 limitations 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 18 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 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 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 provider, which was previously provided to you. Although you were afforded the opportunity to respond, you did not do so.

You enlisted and began a period of active duty in the Marine Corps on 23 August 1965. On 8 September 1965, you received nonjudicial punishment (NJP) for failure to go to your appointed place of duty in violation of Article 86, Uniform Code of Military Justice (UCMJ). You received a second NJP, on 19 November 1965, for a five day unauthorized absence in violation of Article 86, UCMJ. On 23 November 1965, you were evaluated by psychiatry due to

an incident that occurred the day prior in which you were emotionally distressed and ran into the hills surrounding your duty station during a rain storm. You were diagnosed with Emotionally Unstable Personality. The medical provider stated in pertinent part, “[s]hortly after enlistment [Petitioner] realized he had made a mistake, that he could not tolerate the regimentation and authority structure of the military .... He stated he could no longer tolerate military life and that he was willing to do anything to get out....” On 20 January 1966, your Commanding Officer (CO) recommended that you be discharged by reason of unsuitability. Your third NJP occurred, on 7 March 1966, for assaulting another Private by throwing him down on the deck and kicking him in the head in violation of Article 128, UCMJ. On 14 March 1966, you were discharged with a General (Under Honorable Conditions) characterization of service.

Post-discharge, you applied to the Naval Discharge Review Board for a discharge upgrade. However, you were denied on 29 September 1980. Similarly, you applied to this Board for an upgrade to your characterization of service but were denied on 16 October 1984.

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, post-service accomplishments and desire to upgrade your discharge. In addition, the Board considered your contentions that you entered a UA status due to the overwhelming stress you felt and harsh treatment you received from your CO and fellow servicemen, that you were assaulted by the Sergeant and three or four other Marines, that you became depressed, left the base, and did not report the incident because you feared reprisal, and that you were diagnosed with a mental health condition in-service and the assault you experienced exacerbated your mental health condition. You further contend these factors mitigate the misconduct that led to your discharge. For purposes of clemency consideration, the Board noted you provided supporting documentation describing post-service accomplishments but no advocacy letters.

Based on your mental health claim, the Board also relied on the AO in making its determination. The AO noted in pertinent part:

During military service, the Petitioner was appropriately referred for psychological evaluation, properly evaluated, and diagnosed with a personality disorder. This diagnosis was based on observed behaviors and performance during his period of service, psychological evaluation including an overnight hospitalization, and the information he chose to disclose to the mental health clinician. A diagnosis of a personality disorder indicates characterological traits which render military service unsuitable, and by definition is pre-existing to military service. Unfortunately, the Petitioner has provided no medical evidence to support his claims and his personal statement is not sufficiently detailed to establish a clinical diagnosis or nexus with his misconduct. Despite his potential maladaptive coping behaviors to professional stressors, there is no evidence that the Petitioner was not aware of his misconduct or was not responsible for his behavior. 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 some of his misconduct may be attributed to a mental health condition, other than his diagnosed personality disorder."

Based upon this review, the Board concluded that the potentially mitigating factors in your case 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 weighed your relatively brief period of active service against your misconduct. Additionally, the Board concurred with the AO that there is insufficient evidence that your misconduct may be attributed to a mental health condition, other than your diagnosed personality disorder. As a result, the Board concluded significant negative aspects of your active duty service outweighed the positive aspects and continues to warrant a General (Under Honorable Conditions) characterization. While the Board commends your post-discharge good character, 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 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,

8/10/2022

[REDACTED]

Executive Director

[REDACTED]