



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

■  
Docket No: 2449-22  
2440-19  
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.

Because your application was submitted with new evidence not previously considered, the Board found it in the interest of justice to review your application. A three-member panel of the Board, sitting in executive session, considered your application on 27 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 the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (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 17 May 2022, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you did not do so.

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 previously applied to this Board for an upgrade to your characterization of service and were denied on 2 April 2020.

You enlisted in the Marine Corps and began a period of active duty on 5 March 1974. During the period from 8 January 1975 to 9 July 1975, you received three instances of non-judicial punishment (NJP). Your offenses were two periods of unauthorized absence (UA) totaling five days, failure to obey a lawful written order on two occasions, sleeping on post, and dereliction in the performance of duty. On 14 July 1975, you were convicted by a summary court-martial (SCM) of two specifications of UA totaling five days. On 4 August 1975, you received your fourth NJP for two specifications of UA totaling two days. On 30 December 1975, you were convicted by a special court-martial (SPCM) of three specifications of UA totaling 37 days and disobeying a lawful order. As punishment, you were sentenced to confinement, forfeiture of pay, and a Bad Conduct Discharge (BCD). On 2 April 1976, you received your fifth NJP for UA totaling two days. Subsequently, the BCD was approved at all levels of review and, on 26 May 1977, you were discharged from the Marine Corps.

Subsequently, you enlisted into the Navy and began a period of active duty in the Navy on 2 September 1977. On 17 April 1978, you were issued an administrative remarks (Page 13) counseling concerning the seriousness of your involvement in acts which resulted in disciplinary action. On 14 August 1978, you were convicted by a SCM of failure to go to your appointed place of duty and false official statement. On 1 March 1979, you commenced a period of UA that subsequently concluded on 27 August 1981, totaling 897 days. Unfortunately, the documents pertinent to your administrative separation from the Navy are not in your official military personnel file (OMPF). Notwithstanding, 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. Based on the information contained on your Certificate of Release or Discharge from Active Duty (DD Form 214), it appears that you submitted a voluntary written request for an Other Than Honorable (OTH) discharge for the good of the service (GOS) in lieu of trial by court-martial. In the absence of evidence to contrary, it is presumed that prior to submitting this voluntary discharge request, you would have conferred with a qualified military lawyer, been advised of your rights, and warned of the probable adverse consequences of accepting such a discharge. As part of this discharge request, you would have acknowledged that your characterization of service upon discharge would be an OTH. On 18 November 1981, you were discharged from the Navy with an OTH characterization of service by reason of "Good of the Service."

Post-Navy discharge, it appears you enlisted in the Army. A DD Form 214 from the Army documents that you entered active duty on 17 February 1982 and were discharged, on 20 January 1983, for a pattern of misconduct with an OTH.

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 character of service and contention that your discharged was not warranted. You assert that upon your release from the

brig, you received an escort off base and was not given your discharge paperwork and, therefore, did not realize your discharge was “Dishonorable.” You provided evidence from the Department of Veterans Affairs that you are receiving treatment for a number of orthopedic conditions and contend that you suffer from a mental health condition. For purposes of clemency consideration, the Board noted you did not provide supporting documentation describing post-service accomplishments, or advocacy letters.

As part of the Board’s review, a qualified mental health professional reviewed your request and provided the Board with an AO on 17 May 2022. The AO stated in pertinent part:

During his first period of military service, the Petitioner was appropriately referred for psychological evaluation and properly evaluated, with no clinical diagnosis assigned. This absence of mental health diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose to the mental health clinician, and the psychological evaluation as documented in his service records. Among available documents, there is no evidence that he was diagnosed with a mental health condition during his subsequent periods of military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Post-service, the VA has provided treatment for PTSD that is temporally remote from military service, and there is no information regarding the symptoms or onset of this mental health condition to attribute it to military service. Unfortunately, his personal statement and provided records are not sufficiently detailed to establish a nexus with his military service or misconduct. 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 that his misconduct may be attributed to PTSD.”

Based upon this review, the Board concluded that your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct as evidenced by your five NJPs, two SCM convictions, SPCM conviction, and GOS request, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your record of misconduct showed a complete disregard for military authority and regulations. The Board concluded that your discharge from the Marine Corps was proper and equitable under standards of law and discipline, and that the discharge accurately reflects your conduct during your period of service in the Marine Corps, which was terminated by your BCD. In regards to your period of service in the Navy, the Board noted that the misconduct that led to your request for separation for GOS 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 a large measure of clemency when the Navy agreed to administratively separate you in lieu of trial by court-martial. Additionally, the Board concurred

with the AO and determined that there is insufficient evidence of a diagnosis of PTSD that may be attributed to military service, and there is insufficient evidence that your misconduct may be attributed to PTSD. Finally, the Board determined the record clearly reflected that your active duty misconduct was intentional and willful and demonstrated you were unsuitable for further service. The Board also determined that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should otherwise not be held accountable for your actions. Furthermore, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating veterans' benefits, or enhancing educational or employment opportunities. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine/Sailor and continues to warrant a BCD and 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,

8/11/2022

█

Executive Director

Signed by: █