



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

█  
Docket No. 2745-22  
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 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 14 November 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) (collectively, the Clarifying Guidance).

A review of your record shows that you enlisted in the Marine Corps and commenced a period of active duty on 25 November 1974. On 20 November 1975, you received nonjudicial punishment for willful disobedience of a lawful order. On 14 April 1976, you requested to be discharged to escape trial by court-martial. Your request was denied, and on 5 May 1976, you were convicted by a special court-martial for a period of unauthorized absence that lasted from 2 February 1976 to 17 March 1976. Thereafter, you again entered into an unauthorized absence status, and you were apprehended on 14 May 1976. After your apprehension, you were charged with an offense relating to controlled substances. On 15 June 1976, you commenced another period of unauthorized absence. On 24 July 1976, you submitted a request for discharge to avoid trial by court-martial. On 28 July 1976, the convening authority transmitted your request for discharge, recommending it be approved. On 29 July 1976, your Commanding General transmitted your request to the Commandant of the Marine Corps, recommending it be approved.

On 11 August 1976, you were discharged with an other than honorable characterization of service. In 1984, you filed an application for review of your discharge with the Naval Discharge Review Board (NDRB). On 5 December 1984 the NDRB denied your request to change your discharge characterization, and you were notified on 20 December 1984 via naval letter by NDRB.

In your petition, the relief that you requested was not clear. However, the Board determined that your petition constituted a request to change your discharge to a medical retirement, or an upgrade of its characterization, or both. In support of your request, you assert that during your service, while you were on limited duty, your mother became ill, and that you suffered from PTSD. You also provided letters of reference in support of your request.

The Board carefully reviewed all of your contentions and the material that you submitted in support of your petition, and the Board disagreed with your rationale for relief. In reaching its decision, the Board observed that, in order to qualify for military disability benefits through the Disability Evaluation System with a finding of unfitness, a service member must be unable to perform the duties of their office, grade, rank or rating as a result of a qualifying disability condition. Alternatively, a member may be found unfit if their disability represents a decided medical risk to the health or the member or to the welfare or safety of other members; the member's disability imposes unreasonable requirements on the military to maintain or protect the member; or the member possesses two or more disability conditions which have an overall effect of causing unfitness even though, standing alone, are not separately unfitting.

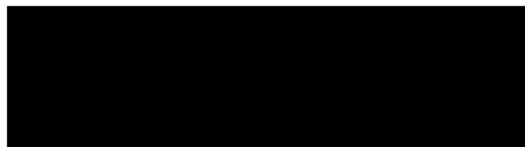
In reviewing your record, the Board concluded the preponderance of the evidence does not support a finding that you met the criteria for unfitness as defined within the disability evaluation system at the time of your discharge. The Board observed that there is no evidence that you received any diagnosis of an unfitting condition while you were on active duty, and there is no referral to a medical evaluation board evident in your records. Similarly, there is no evidence in your record, and you provided none, that relates to any diagnosis or treatment for PTSD. Rather, the Board concluded that you were discharged at your request in order to escape your second trial by court-martial.

In reviewing your assertion for an upgrade to your discharge, and in view of your assertion that you suffered from PTSD, and your inclusion of post-service letters of reference, the Board reviewed your request in light of the aforementioned Clarifying Guidance. In its review, the Board observed that you did not provide supporting information concerning your assertion that you suffer from PTSD. With respect to the letters of reference that you provided, the Board commended you for your community service and good deeds. However, considering of the entirety of your petition in light of your negative record of service, the Board denied your application. The Board determined that your record of a nonjudicial punishment, a court-martial conviction, and your request for discharge to escape a second trial by court-martial, outweighed the positive aspects that you provided. Accordingly, the Board denied your petition.

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,

12/7/2022

A large black rectangular redaction box covering the signature area.

Deputy Director

Signed by: 