



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



Docket No: 3105-22  
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 October 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). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to 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 enlisted in the Marine Corps and began a period of active duty on 26 November 1968. You received non-judicial punishment (NJP) on five occasions from 4 June 1969 to 13 July 1971. Your offenses were drinking alcohol as a minor, contempt towards a superior petty officer,

unauthorized absence (UA) for 13 days, and failure to obey lawful order on two occasions. You also were found guilty at two special courts-martial (SPCM), on 26 April 1971 and 19 November 1971, for assault on another Marine, UA, breach of peace, drunk on station, and breaking restriction. In addition, you were arrested, charged, and convicted by ██████████ authorities for assault of a ██████████ and wrongful appropriation of a vehicle. As a result, you were notified for separation on 10 February 1972 for misconduct, civilian conviction. You elected to consult with military counsel but waived your right to an administrative board. After your commanding officer recommended your separation and a legal review determined your proceedings were sufficient in law and fact, your discharge for civilian conviction with an Other Than Honorable (OTH) characterization was approved by the separation authority. On 27 March 1972, you were so discharged.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire for a discharge upgrade and contentions that you need services for treatment for your mental health condition, you were racial discriminated against, and you were angry and suspicious of most people upon returning from ██████████ and often responded with aggression if you felt threatened in any way. For purposes of clemency consideration, the Board noted you provided advocacy letters but no supporting documentation describing post-service accomplishments.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 26 July 2022. The AO stated in pertinent part:

There is insufficient evidence in the Petitioner's service medical record and his personal statement that he may have sustained a TBI with lasting symptoms during military service. During military service, he was evaluated by psychiatry and received no mental health diagnosis. This lack of diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician. He has provided no medical evidence in support of his claims. Most of his misconduct occurred following his combat deployment and could be considered consistent with symptoms of PTSD avoidance. However, he did have problematic alcohol use prior to his combat deployment, which makes it difficult to attribute post-deployment misconduct associated with alcohol use to symptoms of PTSD. Additionally, it is difficult to attribute his civilian charges to PTSD, as he claimed that the charges were erroneous. 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, "it is my clinical opinion that there is insufficient evidence of a TBI that may be attributed to military service. There is insufficient evidence of a diagnosis of PTSD that may be attributed to military service. There is insufficient evidence that his misconduct could be attributed to PTSD or TBI."

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, SPCM convictions, and foreign civilian conviction, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded that it showed a complete disregard of military authority and civilian authority. Further, the Board considered the likely negative effect your conduct had on the good order and discipline of your unit as well as the discrediting effect it had on the Marine Corps and United States. 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 your misconduct could be attributed to PTSD. The Board noted the nature of your misconduct and concluded, even if there was evidence of PTSD, there was absolutely no nexus between PTSD and all your misconduct, especially your misconduct that resulted in your civilian conviction and formed the basis for your separation. Finally, 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 determined your conduct constituted a significant departure from that expected of a Marine and continues to warrant an OTH. While the Board commends your post-discharge good character, even in light of the Wilkie Memo and reviewing the record holistically, 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,

10/24/2022

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Executive Director

Signed by: █