



**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. 3812-22  
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 SECDEF Memo of 3 September 2014 (Hagel Memo), USD Memo of 25 August 2017 (Kurta Memo), and USD Memo of 25 July 2018 (Wilkie Memo). As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an Advisory Opinion (AO) on 9 June 2022. You were provided the AO and provided a response on 21 June 2022.

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 served two periods of honorable active duty service while a U.S. Marine Corps Reservist (USMCR); the first ending on 24 September 1973 and a second on 26 March 1975. During the latter period you were given reentry code RE-3A. Per this reentry code, you failed to meet aptitude area prerequisite and were required to obtain authority from the Commandant of the Marine Corps (CMC) in order to reenlist.

On 19 February 1976, you requested a waiver to reenlist that was approved and, on 5 March 1976, you began a period of active duty in the regular component of the U.S. Marine Corps (USMC). Subsequently, on 1 May 1976, you were promoted to Corporal/E-4. On 23 July 1976, you received your first nonjudicial punishment (NJP) for a period of unauthorized absence (UA) from your appointed place of duty and disobedience of a lawful order. Later, on 21 September 1976, you commenced a second period of UA which lasted until 24 June 1977. As a result, you submitted a request for discharge to escape

court-martial on 28 June 1977. On 1 July 1977, a staff judge advocate's (SJA) review of your case found the proceedings were sufficient in law and fact. Subsequently, the separation authority approved your request and directed you be discharged with an Other than Honorable (OTH) characterization of service by reason of Good of the Service (GOS) to escape trial. On 5 July 1977, you were discharged.

On 26 June 1979, the Naval Discharge Review Board (NDRB) conducted a review of your discharge and determined no impropriety of inequity existed with your discharge. On 9 June 1980, the NDRB again found your discharge was proper as issued.

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: (1) you incurred PTSD during military service, (2) you experienced financial hardship, (3) You experienced combat fire in Vietnam, (4) your name and rank are incorrect, and (4) you were assaulted while at boot camp by a drill instructor and you are still haunted by the assault. Lastly, you state, "there should only be one discharge from my time served (29 March 1973 to 12 March 1976) as your time in service from 12 March 1976 to 5 July 1977 was expunged." 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 PTSD 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 of a mental health diagnosis during military service. Post-service, he has received a diagnosis of PTSD that the VA [department of veterans' affairs] has determined to be related in part to traumatic events during military service. Unfortunately, his statements contemporary to his service indicate that his extended UA was not related to PTSD avoidance symptoms, but rather due to financial difficulties experienced by his family at the time, as well as frustration with military pay procedures. Additional records (e.g., 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 post-service 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."

In response to the AO, you provided a statement providing clarifying information on the circumstances of your case.

Based on 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 NJP and request to be discharged for the good of the service, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and found that your conduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD and you provided no evidence to support your contentions of assault. Finally, the Board believed that considerable clemency was extended to you when your request for discharge to avoid trial by court-martial was approved by the Marine Corps; thereby allowing you to avoid the stigma of a court-martial conviction and likely punitive discharge. 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.

Regarding your request to change your name and rank, the Board determined you provided insufficient evidence to support relief. First, the Board found that your rank is accurately reflected as E-4 on your last DD Form 214 based on your promotion to that paygrade in May 1976. Second, the Board found no evidence that your last period of active duty was “expunge” from your record. As discussed, the NDRB determined on two separate occasions that your discharge was proper as issued and made no changes to your record. Third, the Board determined the name listed on your DD Form 214s accurately reflects the name under which you enlisted in the Marine Corps. On 28 March 1973, you signed an enlistment contract under the name █ by attaching a signature bearing that same exact name. Therefore, the Board found no basis in error or injustice to change your name in your record. 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,

7/28/2022

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Deputy Director

Signed by: █