

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

> Docket No: 3966-22 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 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 7 September 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 an advisory opinion (AO) from a qualified mental health professional dated 13 July 2022. Although you were provided an opportunity to comment on the AO, you chose not to do so.

You entered active duty with the Marine Corps on 25 June 1990. During the period from 27 December 1991 and 4 May 1992, you received two non-judicial punishments (NJP) for unauthorized absence (UA) for five days and two specifications of negligence due to losing your military identification card (I.D). On 10 August 1992, a special court-martial (SPCM) convicted you of making a false official statement and 14 specifications of wrongfully and unlawfully writing worthless checks valued at \$1460. You were sentenced to reduction to E-1, confinement for 100 days, forfeiture of pay, and a Bad Conduct Discharge (BCD). After the BCD was approved at all levels of review, on 21 August 1995, you were so discharged.

You previously applied to this Board for a discharge upgrade but were denied on 7 March 2013. The Board determined the mitigation evidence you submitted in support of your request was insufficient to offset the seriousness of your misconduct that resulted in two non-judicial punishments (NJP) and a special court-martial (SPCM) conviction.

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 you incurred Post Traumatic Stress Disorder (PTSD) and other mental health conditions during military service in the **Sector** Further, the Board considered your arguments that the Department of Veterans Affairs (DVA) diagnosed and treated you for PTSD but discontinued treatment due to medication side effects, you "witness horrible things" following a 1991 volcanic eruption which resulted in "nightmares of people being buried alive, and your BCD is erroneous. 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 12 July 2022. The AO stated in pertinent part:

There is no evidence that he was diagnosed with a mental health condition in military service, or that he exhibited any psychological symptoms or behavioral changes indicative of a diagnosable mental health condition. Throughout his disciplinary processing, there were no concerns raised of a mental health condition that would have warranted a referral for evaluation. He has provided no medical evidence to support his claims. Unfortunately, his personal statement is temporally remote from his military service and not consistent with available service records. His statement is not sufficiently detailed to establish clinical symptoms or provide a nexus with his 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 considered clinical opinion there is insufficient evidence of a diagnosis of PTSD or another mental health condition that may be attributed to military service. There is insufficient evidence his misconduct could be attributed to PTSD or another mental health condition."

Based upon this review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined your misconduct, as evidenced by your two NJPs and SPCM conviction, outweighed the potential mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the discrediting nature of your misconduct to the Marine Corps. Further, the Board noted you did not provide any substantiating evidence to support your contentions. Therefore, the Board concurred with the AO that there is insufficient evidence that your misconduct could be attributed to PTSD. Finally, the Board noted you were appropriately assigned a BCD on your DD Form 214 as sentenced by the SPCM. As a result, the Board concluded your conduct constituted a significant departure from that expected of a Marine and continues to warrant a BCD. 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 your case. 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,		
	9/13/2022	
Executive Director		
Executive Director		

Sincerely,