

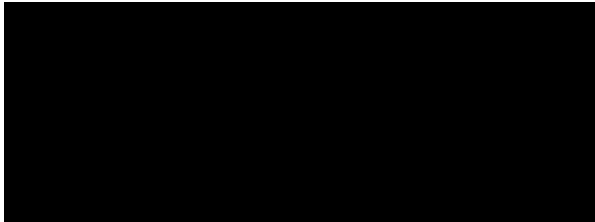


DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
701 S. COURTHOUSE ROAD, SUITE 1001
ARLINGTON, VA 22204-2490



Docket No: 4514-22

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 12 August 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).

You enlisted in the Navy and entered active duty on 30 October 1974. You pre-enlistment physical examination, on 29 October 1974, and self-reported medical history both noted no psychiatric or neurologic conditions or symptoms.

On 30 January 1976, you received non-judicial punishment (NJP) for misbehavior of a sentinel or lookout by sleeping at your post. You did not appeal your NJP. On 18 July 1977, you

received a "Page 13" counseling sheet (Page 13) where you acknowledged that you have been counseled concerning your deficiencies in military behavior. The Page 13 expressly warned you that further misconduct of a discreditable nature with military authorities may be grounds for processing for an administrative discharge.

On 27 July 1977, you were convicted at a Summary Court-Martial (SCM) of unauthorized absence (UA) lasting forty-three (43) days. As punishment you were sentenced to a reduction in rank to the lowest enlisted paygrade (E-1), forfeitures of pay, hard labor without confinement, and restriction for forty (40) days.

On 3 August 1977, you were notified of administrative separation proceedings by reason of unsuitability due to your apathy and defective attitude. You waived your rights to consult with counsel and to make any statement. Ultimately, on 9 August 1977, you were discharged from the Navy for unsuitability with a General (Under Honorable Conditions) (GEN) characterization of service and assigned an RE-4 reentry code.

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: (a) your chain of command made a material error of discretion because they did not attempt to rehabilitate or mentor you, (b) you have spent the last forty-five (45) years stigmatized by your less than honorable discharge, (c) overall you have been an excellent Sailor, friend, and family member, (d) you are now seeking the opportunity to restore your good name and reclaim your honor that has been tainted by your GEN discharge, (e) you will be robbed of the opportunity to be recognized as a veteran upon your death and your family will not receive the honor of being awarded a folded flag at your funeral, and (f) you have displayed immense post-service personal development. For purposes of clemency consideration, the Board noted you provided advocacy letters but no supporting documentation describing post-service accomplishments other than your High School Equivalency Certificate.

Based upon 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 SCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and the likely negative impact it had on the good order and discipline of your command.

First, the Board was not persuaded by your arguments regarding loss of veterans' burial benefits since you qualify for certain veteran's burial benefits with a GEN discharge. Please contact your local Department of Veterans Affairs (VA) office to receive more information regarding all of the myriad of veteran's benefits you qualify for based on your GEN discharge characterization.

Second, the Board did not believe that your record was otherwise so meritorious as to deserve a discharge upgrade. The Board concluded that significant negative aspects of your conduct and/or performance greatly outweighed any positive aspects of your military record. The Board determined that a characterization under other than honorable (OTH) or GEN conditions is

generally warranted for misconduct and is appropriate when the basis for separation is the commission of an act or acts constituting a significant departure from the conduct expected of a Sailor.

Third, the Board noted that character of military service is based, in part, on conduct and overall trait averages which are computed from marks assigned during periodic evaluations. Your overall active duty trait average in conduct was approximately 2.48. Navy regulations in place at the time of your discharge required a minimum trait average of 3.0 in conduct (proper military behavior), for a fully honorable characterization of service. The Board concluded that your conduct marks during your active duty career were a direct result of your serious misconduct which further justified your GEN characterization of discharge.

Fourth, in accordance with the Hagel, Kurta, and Wilkie Memos, the Board gave liberal and special consideration to your record of service, and your contentions about any traumatic or stressful events you experienced and their possible adverse impact on your service. However, notwithstanding any VA determination to the contrary, the Board concluded that there was no convincing evidence of any nexus between any PTSD and/or related symptoms and your misconduct, and determined that there was insufficient evidence to support the argument that any such mental health conditions mitigated the misconduct that formed the basis of your discharge. As a result, the Board concluded that your misconduct was not due to mental health-related conditions or symptoms whatsoever. The Board determined that the record clearly reflected your misconduct was intentional and willful and indicated you were unfit for further service. Moreover, the Board noted that the evidence of record did not demonstrate that you were not mentally responsible for your conduct or that you should not otherwise be held accountable for your actions.

Fifth, the Board was also not persuaded by your arguments that the Navy made a material error by not attempting to rehabilitate or mentor you. The Board noted that you were warned of the consequences of continuing to commit misconduct after your NJP. You subsequently committed additional serious misconduct, leaving the Board to conclude your actions showed a complete disregard for military authority and regulations. Based on your conduct, the Board determined the Navy acted reasonably and in accordance with applicable regulations in processing you for administrative separation based on your apparent apathy and defective attitude toward continued military service.

Sixth, the Board also noted that there is no provision of federal law or in Navy/Marine Corps regulations that allows for a discharge to be automatically upgraded after a specified number of months or years. Additionally, absent a material error or injustice, the Board declined to summarily upgrade a discharge solely for the purpose of facilitating VA benefits, or enhancing educational or employment opportunities. Moreover, the Board noted that VA eligibility determinations for health care, disability compensation, and other VA-administered benefits are for internal VA purposes only. Such VA eligibility determinations, disability ratings, and/or discharge classifications are not binding on the Department of the Navy and do not mandate remedial changes to previous active duty service discharge characterizations. As a result, the

Board determined that there was no impropriety or inequity in your discharge, and the Board concluded that your serious misconduct clearly merited your receipt of a GEN characterization and no higher. While the Board carefully considered any matters submitted regarding your character, post-service conduct, and personal/professional accomplishments, even in light of the Wilkie Memo and reviewing the record holistically, the Board still concluded that insufficient evidence of an error or injustice to warrant 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 that 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,

8/18/2022

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