



**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: 4809-22  
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 31 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). 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 31 August 2022. Although you were provided an opportunity to respond to the AO, you chose not to do so.

Your husband, herein referred to as SNM (Subject Named Member), enlisted in the U.S. Navy and entered active duty on 28 January 1965. On 16 June 1967, SNM was found guilty at a special court-martial (SPCM) of failure to obey a general regulation by operating a motor vehicle without a valid operator's permit, operating a passenger car while drunk thereby causing said vehicle to strike a guard rail, and wrongfully appropriating a 1965 Corvair Sedan. SNM was sentenced to

forfeit \$112.00 pay per month for three months and to be reduced in rank to E-3. Despite the aforementioned court-martial, SNM was allowed to continue his enlistment which ended, on 6 December 1967, with an Honorable (HON) characterization of service. He subsequently reenlisted on 7 December 1967.

On 23 September 1968, SNM missed movement of his ship and commenced a period of unauthorized absence (UA) that concluded with his surrender on 24 September 1968. On 30 September 1968, SNM commenced another period of UA that concluded with his apprehension on 17 December 1968. He again went UA on 13 January 1969 and was apprehended on 31 January 1969. Subsequently, on 10 February 1969, SNM was transferred to St Albans Hospital NY for medical evaluation, treatment and disposition. On 31 March 1969, a medical board diagnosed SNM with emotionally unstable personality and recommended he be discharged. In the meantime, on 1 April 1969, SNM received nonjudicial punishment (NJP) for his periods of UA totaling 111 days. SNM was restricted to the limits of the command for 60 days, ordered to forfeit \$79.00 for two months and be reduced in rank to E-2.

Unfortunately, the documents related to SNM's administrative separation are not in his official military personnel file (OMPF). In this regard, the Board relies on a presumption of regularity to support the official actions of public officers and, in the absence of substantial evidence to the contrary, will presume that they have properly discharged their official duties. His Certificate of Release or Discharge from Active Duty (DD Form 214), reveals that SNM was separated from the Navy on 7 April 1969 with an HON characterization of service, his narrative reason for separation is "Unsuitability," and his reenlistment code is "RE-4."

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in SNM's case in accordance with the Wilkie Memo. These included, but were not limited to, your desire to have SNM's rank reinstated to E-3 and your contention that SNM incurred PTSD during military service. You assert that SNM struggled with PTSD and depression, and was also a victim of Agent Orange. For purposes of clemency and equity consideration, the Board considered the evidence you provided in support of your application but noted that you did not provide supporting documentation describing post-service accomplishments or advocacy letters.

Based on your assertion that SNM incurred PTSD during military service, which might have mitigated his discharge rank, a qualified mental health professional reviewed your request for correction to his record and provided the Board with the AO. The AO stated in pertinent part:

There is evidence that he was diagnosed with a mental health condition in military service (anxiety reaction and personality disorder). Post-service, he was diagnosed with PTSD and MDD, which the VA attributed to military service. It is possible that the mental health symptoms recognized during military service were conceptualized as PTSD and MDD post-service, with the passage of time and improved understanding of mental health. It is possible the mental health symptoms he experienced during military service contributed to some of his misconduct. For example, his decision to go UA may have been influenced by anxiety or depression symptoms, in addition to the personal stressors he

experienced at the time. It is possible his alcohol consumption increased due to mental health symptoms, contributing to misconduct by driving while intoxicated. It is difficult to attribute car theft and driving without a valid license to a mental health condition, as these behaviors appear related to poor judgment rather than a response to anxiety or depression symptoms.

The AO concluded, “it is my considered clinical opinion there is in-service evidence of a mental health condition (anxiety reaction and personality disorder). There is post-service evidence of a diagnosis of PTSD that may be attributed to military service. There is evidence some of his misconduct could be attributed to a mental health condition.”

After thorough review, the Board concluded these potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that SNM's misconduct, as evidenced by his NJP, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of SNM's misconduct and found that his conduct showed a complete disregard for military authority and regulations. Further, the Board concurred with the AO that it is difficult to attribute all of his misconduct to a mental health condition, as some of these behaviors appear related to poor judgment rather than a response to anxiety or depression. As a result, 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 restoring SNM's rank to E-3 or granting the requested relief as a matter of clemency or equity. 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,

11/21/2022

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Executive Director

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